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R. v. Tran

2019 BCSC 131

COURT

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2019 BCSC 131 R. v. Tran

IN THE SUPREME COURT OF BRITISH COLUMBIA

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2019 BCSC 131

Date: 20190131

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Regina

v.

Troy Minh Tri Tran

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These Reasons have been edited for publication purposes only

Before: The Honourable Madam Justice Humphries

Reasons for Judgment

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Introduction

[1] Mr. Tran is charged as follows:

between the 1st day of January, 2008, and the 8th day of February, 2009, at or near Vancouver, Burnaby, Surrey and elsewhere, in the Province of British Columbia, at or near Montreal, in the Province of Quebec, and elsewhere in Canada, did unlawfully conspire with Clay Franklin Roueche, and other persons, and with persons unknown, to commit the indictable offences of the murders of Jonathan David Bacon, James Kyle Bacon, Jarrod Wayne Bacon and their associates, contrary to Section 465(1)(a) of the Criminal Code of Canada.

[2] This charge arises out of a gang war between the UN gang and the Bacon Brothers and their associated gang, the Red Scorpions, which took place in the mid 2000's. The war centered around drug territory, and soon became extremely violent, resulting in a series of shootings and deaths, all of which are admitted.

[3] The Crown's case is based primarily on three witnesses, formerly members of the UN gang, and now protected. They will be referred to as Witness 1 ("W1"), Witness 2 ("W2"), and Witness 3 ("W3").

[4] I will examine their evidence in detail, but will first provide a very general overview of the Crown's theory of the workings of the UN gang and certain significant events. This overview is based on the extensive admissions and on evidence called by the Crown.

[5] The UN gang was a loose affiliation of drug traffickers, and in the early 2000s, the gang consisted of two groups: the Valley group and the Vancouver group. The Valley group was based in the Fraser Valley, around Abbotsford and Chilliwack. Both groups recognized Clay Roueche as the leader of the gang, although Roueche was based in the Valley. The accused, Troy Tran, although based in Calgary, was a friend of Roueche's and spent an increasingly large amount of time with the UN gang, becoming a respected member and eventually moving permanently to British Columbia by 2011, if not before.

[6] Roueche was a charismatic figure and, until his arrest on May 17, 2008, ran a successful drug business in British Columbia and the United States, using helicopters to transport drugs over the border. He tried to promote a particular culture and code of conduct for the UN gang, partially based on what he saw as Buddhist rituals and beliefs. The members of the gang had rings and other paraphernalia that signified their membership. Social and business dinners were held regularly. According to the Crown's witnesses, Tran was often there. Roueche organized "shows of force", that is, group events for gang members, to increase the UN profile.

- [7] According to W1, Troy Tran and another man from Calgary, Mark Kim, were body guards for Roueche in 2006. Mark Kim was killed in Calgary at the beginning of 2008. Another man from Calgary, Bill Ly, joined Tran in British Columbia at some point.
- [8] The Bacon brothers, associated with a gang called The Red Scorpions, were also active in the Fraser Valley and growing in strength by the mid 2000s. The UN gang felt their drug turf was threatened and began to take note of the Bacons. They began to scout out locations frequented by the Bacons, as well as residences connected with the Bacons, their associates, and their families. W1 testified that Troy Tran went along on some of these scouting expeditions.
- [9] Although adherence to rules was one of the tenets of UN membership, all three witnesses said rules were often not followed, and people found excuses not to participate in scouting expeditions.
- [10] In October of 2007, six people were shot in a Surrey highrise ("the Surrey Six murders"). The Bacons and their group were considered to be responsible. The UN gang realized they should take the Bacons seriously. Roueche put together a hit team consisting of Cory Vallee and Jesse Adkins and a couple of others.
- [11] On May 8, 2008, Duane Meyer, an important member of the UN gang, was shot and killed at his nanny's residence in Abbotsford, B.C. The core members of the UN gang (set out below in the list of admitted conspirators, together with the additional members alleged by the Crown) were certain the Bacons were responsible.
- [12] It is the Crown's contention that the escalating war with the Bacons, and particularly the murder of Duane Meyer on May 8, 2008, brought the Valley and Vancouver groups together into a common group with a common purpose: to kill the Bacon brothers and their associates.
- [13] It is admitted that, in the early morning hours of May 9, 2008, that is the night following the Meyer murder, shots were fired in the area of Hall Avenue and Collier Street in Burnaby, B.C. This was a location where both the Bacons and the UN gang had "offices" in nearby high rises. This event was referred to in the evidence as the "friendly fire" incident because the witnesses came to believe the shots had been fired mistakenly by UN members at other UN members.
- [14] It is also admitted that at around 5 - 6 p.m. on May 9, 2009, Clay Roueche, JSP, Karwan Saed, Barzan Tilli-Choli, Yong Lee, and Dilun Heng (all members of the UN gang and admitted conspirators) were driving around in a blue Caravan. Reports were received of shots fired at a black Maserati often driven by Michael Le, a Bacon associate. This occurred at the Kensington off-ramp to Highway #1.

- [15] Later that night, at approximately 10 p.m., Jonathan Barber, a stereo installer who was not a Bacon associate but who had been hired by Jonathan Bacon to make alterations to a vehicle, was shot and killed while driving the vehicle associated with Jonathan Bacon. This occurred near a McDonald's restaurant in Burnaby, B.C.
- [16] W2, W3 and Jesse Adkins were using the washroom in the McDonald's restaurant in the area of the shooting when a vehicle associated with the Bacons was spotted in the parking lot. Troy Tran arrived in the parking lot shortly before the Bacon vehicle was spotted. He was driving a white Toyota Tundra. W2, W3, Adkins and Tran left the parking lot and parked behind a nearby fence. Barzan Tilli-Choli and Karwan Saed arrived, having been sent to the location by Roueche when he was told the Bacon vehicle had been spotted. According to W2 and W3, they told Tilli-Choli, who was anxious to begin shooting, that they had all been caught on camera in the McDonald's parking lot.
- [17] When Jonathan Barber left (followed in another vehicle by his girlfriend), Adkins, W3, and Barzan Tilli-Choli followed in Adkins' Tahoe. According to W3, who was in the car with Tilli-Choli and Adkins, Tilli-Choli first shot the girlfriend's vehicle, and then, upon realizing that driver was a woman, concentrated on the Bacon vehicle and shot Jonathan Barber, killing him.
- [18] W2 and Troy Tran had followed the Adkins vehicle some distance behind and heard shots. Using W2's Blackberry to contact W3, they followed Adkins down towards the Fraser River where Adkins, W3, and Tilli-Choli ditched the gun near Marine Drive.
- [19] There is no evidence of anyone being arrested for that killing.
- [20] In February of 2009, Kevin Leclair, a Bacon associate, was murdered in the parking lot of a mall in Langley by Cory Vallee and Jesse Adkins. W2 was also present for that shooting. Cory Vallee has been found guilty of that murder. Jesse Adkins was killed in Mexico in 2011.
- [21] After Roueche was arrested on May 17, 2008 on drug related charges in the United States, Conor D'Monte was appointed leader of the UN gang. D'Monte did not have Roueche's charisma and the UN gang began to lose its cohesiveness, which was loose at the best of times.
- [22] W1 approached the police with a view to cooperating with them in early 2009. Many arrests followed. D'Monte eventually fled the country in 2011.
- [23] W3 then became leader of the UN gang but membership was failing. By late 2015, the UN gang was all but finished. W2 and W3 and Tran and Ly were arrested in January of 2016.
- [24] Aside from W1, W2 and W3, of the many males who played a part in all these events, nearly all are dead, in prison, or have fled the country.
- [25] The following is a chronology of events garnered from the extensive admissions and from the evidence at trial:

March 3, 2006 - Charndev "Dave" Tumber (Bacon associate) was shot and killed in Abbotsford, B.C.

September 21, 2006 - Jonathan Bacon was shot and wounded in Abbotsford, B.C.

September 22, 2006 - Ciaran D'Monte (UN associate) was shot and wounded in Chillwack B.C.

February 17, 2007 - Clayton Eheler (Bacon associate) was shot and killed in Chilliwack, B.C.

October 2007 - Surrey Six murders

New Years, 2007-08 - Mark Kim (UN associate) was killed in Calgary, Alta.

April 2008 - the UN gang went to Montreal for the extreme fights. Their hotel rooms were bugged by police.

May 8, 2008 - Duane Meyer (UN member) was shot and killed in Abbotsford, B.C.

May 9, 2008 -shots were fired in Burnaby, B.C. by UN gang members mistakenly at other UN gang members, and shots were fired at Michael Le's (Bacon associate) vehicle on the Kensington offramp in Burnaby, B.C.

May 9, 2008 - Jonathan Barber (mistaken for a Bacon) was shot and killed in Burnaby, B.C.; his girlfriend was shot and injured in the same incident;

May 17, 2008 - Clayton Roueche (leader of the UN gang) was arrested in the United States, pleaded guilty to various drug related offences, and was sentenced to 30 years in prison.

July 2008 - Elliott Castaneda (UN member) was killed in Mexico

August 25, 2008 - Michael Gordon (UN member) was shot and died in Chilliwack, B.C.

February 6, 2009 - Kevin Leclair (Bacon associate) was shot and killed in Burnaby, B.C.

March 30, 2009 - Sean "Smurf" Murphy was found deceased in Abbotsford, B.C.

March 31, 2009 - Ryan "Whitey" Richards was found deceased in Abbotsford, B.C.

Early 2009 - W1 approached police to cooperate

February - May 2009 - eight UN gang members were charged with conspiracy

October 28, 2009 - Naname Katoaka (UN member) was killed in Argentina

August 14, 2011 - Jonathan Bacon was killed in Kelowna, B.C.

2011-2012 - Jesse Adkins (UN) was killed in Mexico where he fled with Cory Vallee

2011 - Conor D'Monte fled the country

January 2016 - W2 and W3 were arrested and began to cooperate with police.

June 2018 - Cory Vallee was found guilty of conspiracy and of the murder of Kevin Leclair

- [26] Very little of this chronology is directly relevant to the charge against Mr. Tran. However, it is the Crown's position that this gang war between the UN gang and the Bacons/Red Scorpions, which is manifest in these many shootings, was so widespread and pervasive that almost anyone who was associated with the UN gang was part of an agreement, or conspiracy, to hunt and kill Bacon brothers and their associates. The Crown says they have established beyond a reasonable doubt that Mr. Tran formed an intention to be part of this conspiracy, and was part of it.
- [27] The Crown relies on the evidence of three protected witnesses, W1, W2, and W3, all three of which require an instruction to the trier of fact in line with the principles set out in *Vetrovec v. The Queen*, [1982] 1 S.C.R. 811. There is no issue that these witnesses should be treated with caution. However, Crown and defence disagree on the degree of care to be accorded the assessment of the evidence of these witnesses.
- [28] Cory Vallee, another member of the conspiracy, was recently the subject of a lengthy trial before Madam Justice Dillon of this Court, and was found guilty on June 1, 2018, of conspiracy and of the murder of Kevin Leclair, which was during the course of the evidence in this trial. Since much of the same evidence was called before Dillon J. as was called before me, and she was required to assess the credibility of some of the same witnesses, I have not read her analysis of the witnesses, except the portion presented to me by counsel dealing with the conviction in a foreign jurisdiction of W1. I will deal with that later. During closing argument, counsel also agreed that I could refer to Madam Justice Dillon's discussions of the law pertaining to *Vetrovec* witnesses and conspiracy.
- [29] Neither W2 nor W3 had a great deal of contact with Mr. Tran before the Meyer murder. Tran, according to all three witnesses, was from Calgary and was associated with a gang there. W2 and W3 socialized with him occasionally and were aware of him as a friend of the leader of the UN gang, Clay Roueche, but Roueche was based in the Fraser Valley and W2 and W3 were based in Vancouver. Most of the evidence connecting Mr. Tran directly to the ongoing conflict with the Bacons prior to the Meyer murder came from W1, who was also based in the Fraser Valley.
- [30] W3 was present at the murder of Jonathan Barber on May 9, 2008, and W2 was in the area as well. Both testified that Mr. Tran was there, although he did not participate in the actual shooting. As set out above, the witnesses say the shooting was done by another member of the UN gang, Barzan Tilli-Choli.

The Law on Vetovec Witnesses and Conspiracy

[31] As mentioned, I have not read Madam Justice Dillon's assessment of the three "Vetovec" witnesses who testified before me and who also testified before her. However, it is convenient to set out her approach to Vetovec witnesses and to conspiracy since the same arguments were made before her as before me. Her analysis is thorough and there is no point in restating it in other terms. I reproduce it here:

V. The Vetovec Witnesses

A. Legal principles in the assessment of unsavoury witnesses

[159] Both the Crown and the defence acknowledge that Witnesses A, B, C, and D are disreputable and untrustworthy characters whose evidence is important to the Crown's case such that a warning, known as the "Vetovec" warning, is required to alert the trier of fact to the risks of adopting the evidence of each of these witnesses without more (*R. v. Brooks*, 2000 SCC 11 at para. 3). All of these unsavoury witnesses are accomplices to the conspiracy to murder the Bacon brothers and their associates and Witness B and arguably Witness C are accomplices to the Leclair murder. While accomplices are no longer deemed inherently untrustworthy as a rule, they are each in a particularly compelling position to provide a story that falsely implicates the accused (*R. v. Bevan*, [1993] 2 S.C.R. 599 at 611-612; *R. v. Smith*, 2009 SCC 5 at para. 15 (Smith SCC)). There are other characteristics that impair the worth of each of these witnesses which will be examined, but it is fair to say that each of these witnesses are the type of witness for whom the unsavoury witness designation was designed (*R. v. Smith*, 2007 NSCA 19 at para. 18 (Smith NSCA), *aff'd* Smith SCC).

[160] According to the principled framework established in *R. v. Sauvé*, (2004), 182 C.C.C. (3d) 321 (Ont. C.A.), this evidence, having been identified as requiring special scrutiny, then requires identification of the characteristics of each witness that brings his evidence into serious question and then an appropriate caution to be brought to mind that it is dangerous and unsafe to act upon his unconfirmed evidence (*Sauvé* at para. 82; Smith NSCA at para. 111; *R. v. Khela*, 2009 SCC 4 at para. 37). While it may be dangerous to convict without confirmatory evidence, the trier of fact may still do so if satisfied that the Vetovec witness is telling the truth.

[161] Counsel in this case carefully reviewed the cases and then listed the characteristics of a witness that may draw special scrutiny. These include:

* Did the witness have any motive to lie or to mislead the court? (*Bevan* at para. 35; *Brooks* at paras. 8, 10 and 20; *R. v. Drabinsky*, 2011 ONCA 582 at para. 34; *R. v. Haevischer*, 2014 BCSC 1863 at para. 545; *R. v. Paterson*, 2017 BCSC 536 at paras. 117-118)

- * Did the witness receive benefits for cooperation such that there is a risk he is lying to the Court? (Palmer v. The Queen, [1980] 1 S.C.R. 759 at 779-780; Bevan at 614-615; Smith SCC at para. 6; R. v. Delorme, 2010 NWTCA 2, [2010] N.W.T.J. No.28 at para. 12 (cited to QL); Drabinsky at para. 121; Haevischer at paras. 544-547; Paterson at paras. 117-118; R. v. MacIsaac, 2017 ONCA 172 at para. 27; R. v. Najafi-Chaghabori, 2014 BCCA 278 at para. 21; R. v. Yumnu, 2010 ONCA 637 at para. 169)
- * Did the witness have a long criminal history? (R. v. Winmill, [1999] O.J. No. 213, 116 O.A.C. 201 at para. 45; R. v. Kehler, 2004 SCC 11 at para. 15, [2004] 1 S.C.R. 328; Smith SCC at para. 10; Khela at para. 19; Haevischer at para. 547; R. v. Magno, 2015 ONCA 111 at para. 10 [Magno ONCA]; Najafi-Chaghabori at para. 26)
- * Did the witness have a history of lying to and/or manipulating the police? (Sauvé at para.79; R. v. Soomel and Mann, 2006 BCCA 17 at para. 33; Delorme at paras. 3 and 12; Magno at paras. 12-13; R. v. Illes, 2013 BCCA 169 at para. 25; MacIsaac at para. 26)
- * Was the witness an accomplice with knowledge of the circumstances such that it would be easy to falsely implicate the accused? (Bevan at 614; Winmill at para. 45; Smith SCC at para. 15; Yumnu at para. 169; Haevischer at para. 546)
- * Did the witness have access to disclosure or other information that may explain his evidence and/or how it was given? (Sauvé at paras. 76-78; Drabinsky at paras. 144-145; Yumnu at paras. 149 and 169; Illes at para. 7; Labossiere at para. 9; Haevischer at paras. 558 and 563; Magno at para. 34)
- * Did the witness minimize his own wrongdoing? (Haevischer at paras. 543-544; Magno at para. 46; Paterson at paras. 172, 184 and 217)
- * Did the witness exhibit selective memory? (Illes at para. 26; Haevischer at paras. 554 and 562; Najafi-Chaghabori at para. 21; Paterson at paras. 208-210)
- * Did important evidence emerge only after the witness exhausted his memory and/or after prodding by police? (Delorme at para.3; Illes at para. 21, citing para. 284 of the trial judgment; Haevischer at para. 564)
- * Did new information emerge for the first time at trial despite many previous statements? (Winmill at para. 47; Haevischer at para. 565)
- * Was the witness evasive? (Paterson at paras. 172,178,181, and 217)
- * Was the witness testimony inconsistent with external evidence, particularly objective evidence that has been accepted? (Najafi-Chaghabori at para. 22; Paterson at para. 117)
- * Did the witness provide prior inconsistent statements? (Soomel at para. 19; Delorme at para. 27; Najafi-Chaghabori at para. 21; Paterson at para. 117)
- * Was the witness internally consistent: did the witness evidence change while testifying? (R. v. Malik, 2005 BCSC 350 at para. 1187; Paterson at para. 117)

* Upon the application of common sense, is the witness evidence impossible, improbable, or unlikely? (Haevischer at paras. 559-562; Paterson at para. 117,185, 199-207)

- [162] Once the risks of adopting, without more, the evidence of the witness have been catalogued, the nature of the warning that is required in the circumstances should be considered, even for a judge sitting alone (Sauvé at para. 86). The level of caution depends upon the circumstances of the case (para. 87). Highly disreputable and unsavoury witnesses may be called to give evidence; but then, a strong warning is required that it is dangerous to act upon the unconfirmed evidence of these witnesses (para. 89). "Extreme caution" were the words used in *R. v. Hurley*, 2010 SCC 18 at para. 8. However, there is no magic to the words used except that careful consideration is required and it is safer to look for confirming evidence before accepting the evidence of a disreputable witness who may also have a motive to lie (Sauvé at para. 86; *R. v. Chenier* (2006), 205 C.C.C. (3d) 333 at 347 (Ont. C.A.); *Khela* at para. 31; *Delorme* at para. 20).
- [163] The key role of confirmatory evidence and the importance of identifying evidence capable of being confirmatory was described in *Khela* at paras. 45-47. The functional approach in *Vetrovec* requires careful consideration of the type of evidence capable of offering support as to the trustworthiness of the witness (*Khela* at paras. 45-47; *R. v. Labossiere*, 2014 MBCA 89 at para. 45-46). The nature of the confirmatory evidence required has been generally described as "[giving] comfort that the witness is telling the truth about the accused's involvement in the crime" (*Smith* SCC at para. 2) or "capable of restoring the trier's faith in relevant aspects of the witness's account" (*Kehler* at paras. 12 and 15) or "tending to show that the untrustworthy witness is telling the truth as to the guilt of the accused" (*Khela* at para. 37; *Hurley* at para. 19; *R. v. Roks*, 2011 ONCA 526 at para. 63).
- [164] Evidence from another source that is both independent and material is capable of confirming the testimony of an unsavoury witness (*Khela* at paras. 39-40; *Roks* at para. 63).
- [165] One *Vetrovec* witness can confirm the evidence of another unsavoury witness if it is accepted (*Delorme* at paras. 26-27; *Drabinsky* at para. 140; *Magno* ONCA at para. 37). For example from *Delorme*, if the evidence of one unsavoury witness is confirmed by independent evidence, then that witness evidence can be relied upon to support the evidence of another unsavoury witness. The question is not whether a witness is a *Vetrovec* witness but rather whether the evidence of each witness is sufficiently independent of the other to provide confirmation (*Drabinsky* at para. 140).
- [166] The quality of independence may be compromised by collusion among *Vetrovec* witnesses (*Drabinsky* at para. 136; *Illes* at para. 39; *Magno* at paras. 29-30 and 37). However, the evidence that is provided must be so tainted by collusion that it loses the required independence and cannot reasonably be used as confirmation (*Magno* at paras. 29-30). The trier of fact must look to the impact of the collusory conduct "on the independence of the evidence, not the independence of the witnesses from each other" (*Magno* at para. 37). Evidence of one unsavoury witness, even if tainted by collusion on some matters, may still

corroborate evidence of a second unsavoury witness on other matters (Illes at para. 39; *R. v. Kakeeway*, 2017 MBCA 40 at paras. 8-9). The evidence of collusion should be clear that the collusion was for the purpose of implicating the accused, and not simply collusion to exculpate themselves or for some other purpose (Magno at paras. 45-48). If significant allegations of collusion are made, then confirmatory evidence should relate to an important and relevant aspect of the impugned testimony (Khela at para. 52).

- [167] In *Kakeeway*, the witnesses spoke with each other before giving a statement to police and even discussed providing false evidence: but, the collusion did not reach the point where their evidence of the fundamental issue as to whether the accused was the shooter was tainted to the point of not being independent (para. 9). In *Magno*, the witnesses admitted to discussing their stories with each other both before and after providing statements to police, they attempted to minimize their involvement, and they colluded to frustrate the police investigation. However, there was no clear evidence that the co-conspirators colluded for the specific purpose of implicating the accused (para. 46). In that circumstance, there was a reasonable basis for the evidence to be considered independent and the trier of fact could find that the co-conspirators evidence was independent (paras. 43-46). In *Roks*, the trial judge had rejected the defence position that the accused had put their heads together to falsely implicate the accused. In this circumstance, the trial judge was entitled to find mutual confirmation in the evidence of the *Vetrovec* witnesses (para. 72).
- [168] Exposure to disclosure does not necessarily mean that the witness evidence is so tainted as to compromise independence. As stated in *Haevischer* at para. 496, context is everything. The question is whether the information influenced or altered the witness's memory or whether the witness moulded his evidence (*Haevischer* at para. 496; *Labossiere* at para. 63). The possibility of tainting, while relevant, is not enough (*Drabinsky* at para. 146; *Labossiere* at para. 64). In *Haevischer*, the witness access to information from police was not presented to her to influence her memory of events but to convince her that police had compelling evidence about her role as an accomplice. There must be a link between access to disclosure or other information and something to which the witness testified (*Drabinsky* at para. 145). Tainting of a witness by access to disclosure or other materials may be relevant to the independence of a witness, but may not be enough to say that the evidence of one witness could not be independent of the other (*Drabinsky* at para. 146).
- [169] Confirmatory evidence need not incriminate an accused in the criminal activity charged to be confirmatory, even when the only evidence of the accused's participation in an offence is that of a tainted witness (*Vetrovec* at 826; *Kehler* at paras. 15-16; *Khela* at para. 40; *R. v. Khan*, 2011 BCCA 382 at para. 52; *Labossiere* at para. 44; *Illes* at para. 37; *Magno* at para. 115; *Kakeeway* at para. 6). However, the facts of a case are significant to the common sense approach as stated in *Khela* at para. 42:

[42] when looked at in the context of the case as a whole, the items of confirmatory evidence should give comfort to the jury that the witness can be trusted in his or her assertion that the accused is the person who committed the offence. Again in *Vetrovec*, Dickson J. thus noted, with respect to evidence capable of being confirmatory:

All of this incriminating evidence, when considered together, strongly strengthens the belief that Langvand was telling the truth regarding the participation of *Vetrovec* and Gaja. It rebuts any suggestion that he is falsely implicating innocent individuals. [Emphasis added [in *Khela*]; p.833]

[170] When the only issue is whether the accused committed or participated in the offence, there must be comfort provided that the witness is telling the truth "in that regard" (*Khela* at para. 43; *R. v. Seruhungo*, 2015 ABCA 189 at paras. 59-60 per O'Ferrall J.A., dissenting, rev'd 2016 SCC 2 substantially for the reasons of O'Ferrall J.A.). Voith J. put the question this way in *Paterson* at para. 220: "Does this confirmatory evidence 'rebut any suggestion' that [the unsavoury witness] is falsely implicating [the accused]"? To rebut the suggestion, it has been said that the confirmatory evidence need not speak directly to the issue of, for example, whether the accused was the shooter, but should support the evidence of the witness, even if weak (*Kehler* at para. 15; *Labossiere* at para. 44; *Takeaway* at para. 6). As stated in *MacIsaac* at para. 44, the confirmatory evidence "need not cut a direct path to guilt: it need only be capable of assuring the trier of fact that it is safe to rely upon the word of a disreputable witness". However, a more cautious approach could be taken where a particular risk attaches to the testimony of an accomplice who, though truthful as to his own participation, is subject to a particular caution as regards his implication of the accused (*Kehler* at paras. 20-21). In *Seruhungo*, the trial judge had rejected certain confirmatory evidence as weak and the *Vetrovec* witness's testimony that was confirmed by what actually happened was either notorious or capable of apprehension (*Seruhungo* at para. 64).

[171] A trial judge is required to consider pieces of alleged confirmatory evidence individually to see if it is independent, material and relevant to the portion of testimony alleged (*Seruhungo* at paras. 63-65). Circumstantial evidence can be confirmatory. However, it is the combined strength of the totality of the confirmatory evidence that matters in the end (*Khan* at para. 55; *Seruhungo* at para. 65). As stated in *Vetrovec* at 828, the question is ultimately not how trust is restored, but whether it is restored at all.

[172] Of course, as with all witnesses, rejection of some of the evidence of a witness does not necessarily mean that other evidence of that witness need be rejected (*R. v. Sanderson*, 2003 MBCA 109 at para. 32; *Drabinsky* at paras. 71 and 136; *Najafi-Chaghabori* at para. 28). Assessment of credibility and reliability is not a global exercise but is related to specific events and issues (*Drabinsky* at para. 38). The distinction between credibility and reliability was aptly described in *Paterson* at paras. 115-118 and need not be repeated here.

A. Legal principles and evidential rules in the law of conspiracy

[321] The essence of conspiracy is an agreement to pursue a criminal offence (*R. v. J.F.*, 2013 SCC 12 at para. 17). The actus reus of the offence is the completion of the agreement and the mens rea is the genuine intention to agree to commit the indictable offence (*R. v. Wang*, 2013 BCCA 311 at para. 44, leave to appeal ref'd [2013] 3 S.C.R. xi). The general principles were set out by the Supreme Court of Canada in *United States of America v. Dynar*, [1997] 2 S.C.R. 462 as described by Bennett JJA in *Wang* at para. 44:

[44] Conspiracy is a crime of intention. There is no need for the Crown to prove that any steps were taken to commit the substantive offence. The actus reus is the completion of an agreement to commit an indictable offence (beyond mere negotiations). The mens rea is comprised of a genuine intention to agree to commit the indictable offence. In *United States of America v. Dynar*, [1997] 2 S.C.R. 462, Mr. Justice Cory and Mr. Justice Iacobucci, for a majority of the Supreme Court of Canada, set out the general principles of criminal conspiracy:

(a) What is a criminal conspiracy?

[86] In *R. v. O'Brien*, [1954] S.C.R. 666, at pp. 668-69, this Court adopted the definition of conspiracy from the English case of *Mulcahy v. The Queen* (1868), L.R. 3 H.L. 306, at p. 317:

A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties. . . . punishable if for a criminal object. . . .

There must be an intention to agree, the completion of an agreement, and a common design. Taschereau J., in *O'Brien*, supra, at p. 668, added that:

Although it is not necessary that there should be an overt act in furtherance of the conspiracy, to complete the crime, I have no doubt that there must exist an intention to put the common design into effect. A common design necessarily involves an intention. Both are synonymous. The intention cannot be anything else but the will to attain the object of the agreement. [Emphasis in original.]

[87] In *Papalia v. The Queen*, [1979] 2 S.C.R. 256, at p. 276, Dickson J. (as he then was) described the offence of conspiracy as "an inchoate or preliminary crime". In setting out the necessary elements of the offence, he noted at pp. 276-77 that:

The word "conspire" derives from two Latin words, "con" and "spirare", meaning "to breathe together". To conspire is to agree. The essence of criminal conspiracy is proof of agreement. On a charge of conspiracy the agreement itself is the gist of the offence: *Paradis v. R.*, at p. 168. The actus reus is the fact of agreement: *D.P.P. v. Nock*, at p. 66. The agreement reached by the co-conspirators may contemplate a number of acts or offences. Any number of persons may be privy to it. Additional persons may join the ongoing scheme while others may drop out. So long

as there is a continuing overall, dominant plan there may be changes in methods of operation, personnel, or victims, without bringing the conspiracy to an end. The important inquiry is not as to the acts done in pursuance of the agreement, but whether there was, in fact, a common agreement to which the acts are referable and to which all of the alleged offenders were privy.

[Emphasis added by Cory and Iacobucci JJ.]

Conspiracy is in fact a more "preliminary" crime than attempt, since the offence is considered to be complete before any acts are taken that go beyond mere preparation to put the common design into effect. The Crown is simply required to prove a meeting of the minds with regard to a common design to do something unlawful, specifically the commission of an indictable offence. See s. 465(1)(c) of the Criminal Code.

[88] A conspiracy must involve more than one person, even though all the conspirators may not either be identified, or be capable of being convicted. See for example O'Brien, supra; Guimond v. The Queen, [1979] 1 S.C.R. 960. Further, each of the conspirators must have a genuine intention to participate in the agreement. A person cannot be a conspirator if he or she merely pretends to agree. In O'Brien, Rand J. held at p. 670 that

a conspiracy requires an actual intention in both parties at the moment of exchanging the words of agreement to participate in the act proposed; mere words purporting agreement without an assenting mind to the act proposed are not sufficient.

Where one member of a so-called conspiracy is a police informant who never intends to carry out the common design, there can be no conspiracy involving that person. Nonetheless, a conspiracy can still exist between other parties to the same agreement. It is for this reason that the conspiracy in this case is alleged to involve Mr. Dynar and Mr. Cohen, and not the confidential informant "Anthony".

[322] The Crown must prove knowledge of the accused as to the nature and scope of the agreement: that is, knowledge of the object of the agreement (R. v. Grewall, 2001 BCSC 48 at para. 55; R. v. Kandola, 2012 BCSC 968 at para. 250). However, it is not necessary that the accused know all of the details or identities of the other co-conspirators (Kandola at para. 250). Identification of the object of the conspiracy is important to establish knowledge and whether statements made were towards the accomplishment or furtherance of that object (R. v. Magno, 2012 ONSC 4001 at para. 35).

[323] Neither knowledge of the existence of a scheme to commit an offence nor participation in a criminal scheme alone establishes the act of conspiracy because the gist of the offence is a meeting of the minds to achieve a criminal objective (R. v. J.F. at para. 51; Haevischer at para. 576). The inquiry is whether there was a common agreement to which the acts are referable and to which the alleged conspirators were privy (Grewall at para. 43; R. v. Root, 2008 ONCA 869 at para. 67; Kandola at para. 246).

- [324] Proof of the accused's agreement to pursue a crime or his participation or membership in the conspiracy is sufficient for conviction (*R. v. Carter*, [1982] 1 S.C.R. 938 at 943). Knowledge and acts done in furtherance of a criminal scheme are circumstantial evidence from which it may be inferred that the accused agreed to commit the indictable offence, particularly if they co-exist (*Kandola* at para. 245; *J.F.* at paras. 51-52; *Haevischer* at para. 576-577). It is the cumulative effect of acts and declarations that may give rise to an inference of a concerted purpose (*Haevischer* at para. 581).
- [325] Participation of an accused in a conspiracy may be proven by direct evidence of his own words and conduct (*Carter* at p. 8; *R. v. Rojas*, [1997] O.J. No. 3756 (Gen. Div.) at para. 6; *Kandola* at para. 244). Evidence of association between an accused and co-conspirators can be some evidence establishing that the accused was a party to the conspiracy (*Haevischer* at para. 584). All of this conduct is to be considered within the context or background of other evidence, that is, "against the picture provided by the acts and declarations of the alleged co-conspirators" (*R. v. Fimongnari*, [1983] B.C.J. No.576 (B.C.C.A.) at para. 83).
- [326] Participation of the accused may also be proven by the acts and declarations of other participants in furtherance of the common unlawful purpose once it has been established that a conspiracy existed and that the accused was probably a member (*Carter* at 944; *R. v. Barrow*, [1987] 2 S.C.R. 694 at 740; *Smith NSCA* at para. 195). The *Carter* approach to the co-conspirator's exception to the hearsay rule established safeguards against the traditional dangers associated with hearsay through consideration of the evidence in three stages, as described in *R. v. Tran*, 2014 BCCA 343 at para. 78:
- [78] In *Carter*, Mr. Justice McIntyre held that to reach a verdict in a case in which the Crown relies on the co-conspirator exception to the hearsay rule a trier of fact must proceed in three steps. He reiterated those steps in *R. v. Barrow*, [1987] 2 S.C.R. 694 at 740. They are:
- (1) The trier of fact must consider all of the evidence to determine whether the alleged conspiracy has been proven beyond a reasonable doubt.
 - (2) If the alleged conspiracy is found to exist, then the trier of fact is to consider the evidence directly admissible against each accused and unindicted conspirators to decide, on a balance of probabilities, whether that person is a member of the conspiracy.
 - (3) If the trier of fact is satisfied that an accused is probably a member of the conspiracy, then it must go on to decide whether that accused's membership has been established beyond a reasonable doubt. At this step, the trier of fact must consider all of the evidence, including hearsay acts and declarations made in furtherance of the conspiracy by those who have been found to be probable members of the conspiracy.

See also: *R. v. Wang*, 2013 BCCA 311 at para. 48, 299 C.C.C. (3d) 431, leave to appeal ref'd, [2013] 3 S.C.R. xi.

- [327] The determination at stage one is that a conspiracy existed beyond a reasonable doubt. The trier of fact is not deciding whether any particular accused or unindicted co-conspirator was a member of the conspiracy (Smith NSCA at para. 197; Tran at para. 103). The question is whether as a matter of logic and human experience an inference of the existence of an agreement is available based upon "all of the evidence" (Carter at 947; Barrow at 33; Smith NSCA at para. 197; R. v. Puddicombe, 2013 ONCA 506 at para. 111, leave to appeal ref'd [2013] S.C.C.A. No. 496; Tran at para. 106). Potentially in-furtherance statements made by unindicted co-conspirators can be considered at stage one as circumstantial evidence of the existence of the agreement (R. v. Chang, [2003] O.J. No.1076 (C.A.) at para. 57; Puddicombe at paras. 111-113; Tran at paras. 105-106). Evidence that an alleged co-conspirator spoke about the plan, or the reasons why murder was necessary, or the feasibility of the plan, or the means to carry out the plan, supports the inference that a plan or agreement existed and is properly considered at stage one (Puddicombe at para. 113).
- [328] Probable membership at stage two of Carter is determined on the basis only of direct evidence admissible against the accused (Fimongnari at paras. 33 and 76; Kandola at para. 260; Tran at para. 116). The trier of fact must determine that it is more likely than not that the accused is a member of the conspiracy, a test based upon a balance of probabilities (Kandola at para. 263; R. v. Sargeant, 2017 ONCA 725 at paras. 38-39). When an alleged co-conspirator describes acts and declarations of the accused in his testimony, that evidence is directly admissible against the accused at step two (Yumnu at para. 342; Puddicombe at para. 107). Direct evidence of the acts and declarations of the accused may also be placed in the context of what other alleged participants were saying and doing at the relevant times (Langille c. R., 2007 QCCA 74 at para. 8 and 15; Wang at paras. 53-65; Tran at paras. 116-118). Phone calls or other conversation of co-conspirators not involving the accused may not be considered for the truth of what was said but may be relevant for the fact that the phone call or conversation occurred and between whom so, for example, demonstrating the proximity of the accused to the conspiracy (Wang at para. 55).
- [329] Step three requires consideration of evidence that is directly admissible against the accused as well as evidence of the acts and declarations done in furtherance of the agreement by other probable co-conspirators (Kandola at para. 263; Tran at para. 78). At this stage, membership of the accused in the conspiracy must be proven beyond a reasonable doubt.
- [330] The "in furtherance" requirement has been the subject of much discussion but generally describes acts or declarations that advance the object of the conspiracy or constitute a step in furtherance of the common design (Chang at para. 123; Kandola at para. 261). These include statements made to enhance the credibility of a criminal organization, warning of something gone awry, reporting on recent events to another co-conspirator (Kandola at para. 261), and reassuring about reliability and capacity to get the job done (Sargeant at para. 28). It does not include purely narrative statements (Chang at para. 121; Kandola at para. 261; Sargeant at para. 29). While it is ultimately up to the trier of fact to determine

whether an act or statement of a co-conspirator is said or done in furtherance of the conspiracy, the evidence must first be reasonably capable of that interpretation (Puddicombe at para. 116).

- [331] Proof of participation or membership of all named co-conspirators is not essential (Root at para. 69; Kandola at para. 246). However, if the acts and declarations of other co-conspirators in furtherance of the common design are to be taken into consideration at stage three in Carter, probable membership of those alleged co-conspirators must be determined (Kandola at para. 260; Wang at paras. 49 and 72-73).
- [332] Keeping in mind that the Carter rule is basically a rule of evidence, but given that the Crown relies upon some hearsay evidence to support the charge of conspiracy to murder, and also keeping in mind the issues surrounding the particular events or characterizations, it is decided that the most appropriate approach to the evidence here is by using the three stage analysis in the Carter test.

Members of the Conspiracy, and Additional Alleged Members

- [32] In order to convict an accused upon a charge of conspiracy, the Crown must prove beyond a reasonable doubt that the conspiracy existed and that the accused was a member of it. If direct evidence against the accused raises the probability that the accused was a member of the conspiracy, then the co-conspirator's exception to the hearsay rule allows evidence in furtherance of the conspiracy that is admissible against other members of the conspiracy, to be used against the accused in order to establish his guilt beyond a reasonable doubt: R. v. Carter, [1982] 1 S.C.R. 938.
- [33] The existence of a conspiracy to kill the Bacon brothers and their associates during the relevant time is an admission of fact as follows:

At times between January 1, 2008 to February 8, 2009, certain members and associates of the UN conspired with each other to kill the Bacon brothers and certain of their Red Scorpion associates ("the Conspiracy"). The Bacon brothers were the primary targets of the Conspiracy.

- [34] Several thick volumes of admissions were filed, and the evidence called at trial establishes beyond a reasonable doubt that the conspiracy existed. The issue is whether the Crown has proven beyond a reasonable doubt that Mr. Tran was a member of the conspiracy.
- [35] The following people are admitted to be members of the conspiracy:

Clay Roueche

Barzan Tilli-Choli

Karwan Saed

Ion Kroitoru

Dilun Heng

Yong Sung Lee

Amir Eghtesad

Craig Cameron

Witness 1 ("W1")

Witness 2 ("W2")

Witness 3 ("W3")

Justice System Participant ("JSP")

[36] The Crown also alleges the following people are members of the conspiracy:

Conor D'Monte

Duane Meyer

Bill Ly

Kreshnik Ismailaj

Jesse Adkins

Manh Nguyen

Cory Vallee

[37] I will set out the Crown's evidence against Mr. Tran, the respective positions of Crown and defence, and will consider the applicability of the Vetrovec principles. I will then consider whether the evidence I accept and the facts I find are sufficient to prove the Crown's case against Mr. Tran beyond a reasonable doubt.

Evidence of the Vetrovec Witnesses

Witness 3 ("W3")

[38] During W3's evidence I raised several times the necessity to have the source of hearsay evidence given. Just because evidence may be used in a certain way against Mr. Tran if the co-conspirator's exception is eventually invoked does not mean the usual rules of admissibility of evidence ab initio can be disregarded. After several days of evidence, the Crown agreed that it should be more careful to lead the source of hearsay evidence.

- [39] W3 was arrested on murder and conspiracy charges in January of 2016. He testified that, after his initial interview, he did not think the police had a strong case against him for the Barber murder. He had tried in 2012, through approaching various lawyers who represented UN members, to see the video of the McDonald's parking lot that was relevant to the Barber shooting, but was told he could not see it. He did not see it until the Vallee trial and noted it was very poor quality.
- [40] In any event, guns and drugs (Fentanyl) were located in his basement on his arrest. Therefore he thought he could be facing 15 years in jail and could lose his house in a civil forfeiture proceeding, so decided to cooperate with the police in exchange for witness protection and money.
- [41] W3 agreed to become a police agent in order to assist the police in obtaining information about Conor D'Monte and a man named Kelly Hurst, although he knew it was very unlikely he would be successful. He would receive \$400,000 for this work.
- [42] W3 described his own past criminal behaviour, which was extensive and violent, although he escaped without a criminal record. It began in his teenage years. He was a UN member by 2002-3.
- [43] The first time W3's parents became aware that he had gang affiliations was when a group photograph taken at UN gang member Evan Appell's funeral in 2005 was published in the paper. The large group in the photograph were UN gang members and associates. W3 and W2 were in the photograph. W3 testified that Troy Tran, who was also in the photograph, was at that time an associate of the UN gang.
- [44] In cross-examination, W3 agreed he and W2 had kept their gang life separate and secret from their families, and thus had plenty of practice in keeping their stories straight. W3 admitted he has been unfaithful in his marriage and hid it from his wife. He agreed he and W2 have covered for each other.
- [45] He also admitted that he had been instrumental in planning the death of Naname Katoaka in Argentina in 2009, an associate who had become a liability.
- [46] W3 also attempted to import, produce and sell a number of drugs throughout his criminal career, including pressing Fentanyl pills in his basement shortly before his arrest, but none of these efforts were successful. Either he was ripped off by suppliers or the quality of the drugs was bad and they could not be sold.
- [47] Despite the failure of these ventures, W3 acknowledged in cross-examination his long success in avoiding arrest was due to luck, and because he is clever, careful, manipulative and ruthless.

History of UN

- [48] W3 testified that the UN gang initially consisted of two loose groups of drug traffickers: the Valley group and the Vancouver group. Its business was drug dealing, primarily exporting marijuana and MDMA and importing cocaine.
- [49] Clay Roueche, who was based in the Valley, was recognized as the leader of the gang, although he reported to a man they called Versace (Manh Nguyen). W3 said that Clay Roueche organized the importing/exporting program and made everyone a lot of money. They used helicopters and trucks to transport the drugs across the border.
- [50] W3 described the development of the UN gang and its various rituals, including initiation ceremonies, clothing, rings, and dinners, and credos. Some of their beliefs were apparently based in Buddhism. W3 said he and Troy Tran shared a belief in a superstition that releasing a lobster into the wild was good luck. Mr. Tran has a prominent mole on his face and W3 said Tran believed that trimming the hairs on the mole was bad luck unless someone else did it.
- [51] W3 testified that all communications by UN gang members and associates were done by email on encrypted Blackberries from which other functions were removed. Everyone used a nickname. Often the real names were not known.
- [52] W3 said Troy Tran had various nicknames: "T", "TRex", "Mole", and "Whiskers", although later, by 2008, someone else had the nickname TRex. "T" and "TRex" show up on a couple of seized Blackberry address books.
- [53] W3 said the gang often ate at the Mango Tree, a restaurant owned by Khamla Wong, who was a respected elder but not a member of the gang. W3 said Mr. Wong did not like the Bacon war and was not involved. W3 said JSP was also not overly involved in the Bacon war (although JSP is an admitted member of the conspiracy), but he was a high-up UN member. JSP was involved with Clay Roueche's helicopters and cross-border drug trade.
- [54] W3 testified that conflict with the Bacons began to develop over drug territory.
- [55] W3 said Jonathan Bacon had wanted to have a meeting to try and calm things down, but Clay Roueche refused. James Chan, who was the boss of the Vancouver side at that time was not happy with that, so tried to keep the Vancouver group out of it. W3 said the Vancouver side did not consider the Bacons as their problem. However, Clay Roueche asked for some help for an outing related to the Bacons in 2006 and James Chan agreed to provide it, although nothing came of it.
- [56] W3 said James Chan developed a drug problem and began to lose the respect of the gang members by 2006. W3 began to take more of a role and had more contact with Roueche and Conor D'Monte, gathering intelligence about the Bacons. Roueche and D'Monte showed W3 the location of Dennis Karbovanec's apartment (Karbovanec was known to be a close associate of the Bacons) and the Bacon's parents' home in 2007.

- [57] W3 said when the Bacons were charged with the Surrey Six murders, which occurred in October of 2007, the UN gang began to take them seriously. Everyone was expected to gather intelligence; lists of vehicles and licence numbers were compiled. W3 testified that bounties were put on the Bacons, he thinks while Clay Roueche was still in Canada, that is before mid-May of 2008. The Hell's Angels also put \$50,000 on each brother.
- [58] W3 said Cory Vallee, supposedly connected to a gang in Quebec, was brought in as a hit man sometime in 2007 and was given an allowance by Roueche. W3 provided Jesse Adkins to Cory Vallee to use as a driver and a guide. He said their job was to drive around, locate Bacons, and kill them. W1 later testified that he was told by Roueche to show Vallee around the Lower Mainland, but W3 said he learned Vallee had lived in North Vancouver and been a garbage truck driver there, so Vallee knew his way around the lower mainland and would not need directions. W3 said he learned from Jon Kroitoru, who had introduced Cory Vallee to Clay Roueche, that Kroitoru had made up the Quebec gang connection in respect of Vallee.
- [59] W3 testified that despite Roueche's attempts to have an organized group with rules, the UN gang was "disorganized crime" - a loose affiliation of drug dealers. There was a problem getting people to follow the rules and there was no accountability except for breaches of major rules. People did what they wanted. He agreed it was important to look like you were following group orders rather than actually complying.

Meeting Troy Tran

- [60] According to W3, Mr. Tran came from Calgary and bounced back and forth between Vancouver and Calgary. He thought Tran lived in Calgary until 2011, although he could not recall specifically. He said Tran got an apartment in Yaletown in 2011.
- [61] W3 said he first met Tran in 2005, probably at a dinner, through Clay Roueche, who was the leader of the UN gang. W3 recalled giving Mr. Tran his condolences over the shooting of a friend at the Gorg-o-Mish nightclub downtown.
- [62] However, this nightclub event occurred in 2007, and Mr. Tran was in the photo taken at Evan Appell's funeral in 2005, as was W3. Nevertheless, W3 said it remained his impression that he first talked to Tran over the nightclub incident, although he acknowledged he might be wrong in this.
- [63] W3 said he saw Tran many times, but they were not that close until after Clay Roueche's arrest. He saw Tran with Duane Meyer at various group functions. He said Tran was also friends with Versace.
- [64] According to W2 and W3, rings were an important symbol of UN membership. W3 said Troy Tran became a member of the UN gang and received a ring at the Kirin Restaurant in 2006 or 2007. Various names of UN members were put to him in cross-examination and he had no specific memory of their ring ceremonies or even whether they had rings.

- [65] W3 was adamant that Tran had a UN ring and that W3 was at the ceremony, although he acknowledged there were many ceremonies and he could not remember everyone who had one. However, in an earlier statement to the police, W3 had said he was probably there but had no specific memory of being at Tran's ring ceremony. At trial, he said he has thought about it since then and now has a memory of it.
- [66] Also in cross-examination W3 acknowledged his differing memory as to when Jesse Adkins got a ring, whether it was with Cory Vallee or with John Sheaves (another member of the hit team, also referred to as John Shear).
- [67] W3 said everyone was in the hunt for the Bacons; W3 himself provided updated lists of vehicles and went scouting every week. However, he said he is not personally aware of whether Tran went on scouting/hunting missions or not. He testified to some occasions where he thought Tran might have been present.
- [68] W3 mentioned reconnaissance missions he participated in prior to Duane Meyer's death. W3 said Clay Roueche had shown him, on earlier occasions, locations related to Denis Karbovanec and the Bacon parents. Another was with Conor D'Monte, who showed him the location of the Bacon "office". Another occasion was a request by Roueche to look at Mike Le's (a member of the Red Scorpions) location, along with Cory Vallee and Jesse Adkins.
- [69] W3 testified that Troy Tran was also there when Roueche asked him to scout out Mike Le's place, but in cross-examination admitted he could not say for sure that Tran was with him on this occasion. He said this was prior to Duane Meyer's murder. In the Vallee trial W3 had not mentioned this incident. When asked to explain why, he said he answered what was asked.
- [70] W3 agreed in cross examination that Tran was not involved in any hit crews against the Bacons, nor did he share or pass information on Bacon intelligence. He said he did not know Tran well at the time of the Barber murder. W3 agreed Tran was a mellow pot-smoking guy. He said he spoke to Tran about the Bacons at dinners, but cannot remember Tran's exact words. He said in general, people said they hated the Bacons and they should "get it".
- [71] W3 said Troy Tran and Bill Ly were the only members of the FK group in the UN. He said the UN had kind of an alliance of sorts with the FK group, which was from Calgary, but there was no back and forth. He said Tran told him no one from FK would come to fight this war because no one was coming from Vancouver to help them fight their own war with the FOBs (this term was not explained). W3 could not say if there was any connection between the FK members in Calgary and the UN.
- [72] Many members of the UN gang went to Montreal in April of 2008 to watch the extreme fights. W3 could not say if Tran was there or not.

The Barber Murder, May 9, 2008

- [73] W3's most significant contribution to the Crown's case against Mr. Tran is his testimony surrounding the shooting of Jonathan Barber on May 9, 2008, the night following Duane Meyer's murder.
- [74] W3 testified that everyone in the gang went to Mr. Meyer's funeral, including Troy Tran.
- [75] W3 testified that he learned of the Meyer murder around 8 or 9 p.m. on May 8, 2008, when he received a message on his Blackberry. He also received an email about "getting these guys". W3 could not say if Tran got a message about getting the Bacons after Duane Meyer was shot, as he did not memorize the cc list.
- [76] W3 testified that the day following the killing of Duane Meyer, he went golfing. Later that night, he emailed Jesse Adkins, his driver, to pick him up. W3 had two AK47 semi-automatic weapons in his basement. He wiped them down and loaded them, and put them into a black dufflebag. Adkins came to get him in a green Chevy Tahoe, and they then picked up W2.
- [77] W3 said there was no formal plan to use the guns; they were a donations towards the plan to kill the Bacons. W3 emailed Roueche to tell him they were going out and to ask where they should go. Roueche told them the Burnaby office. This was a highrise complex near Kingsway in Burnaby where both the UN gang and the Bacons had an "office". W3 testified that Roueche said he would have someone meet them; Roueche might have said Troy would meet them but he was not sure.
- [78] Jesse Adkins, W3, and W2 headed to Burnaby. They drove around looking for vehicles and spotted a black Mercedes belonging to the Bacons, near the "office". It was empty. They sat and watched it. W3 emailed Clay. Clay said someone was on their way up.
- [79] W3 testified that while they were watching the Mercedes, W2 told them he needed to use the bathroom, and so did Jesse Adkins. They went to McDonald's, a block and a half away. W3 said he reported this to Clay Roueche, and he believes that's when Roueche said Troy Tran would meet them there.
- [80] In the Vallee trial W3 had said it was possible he emailed someone before going to McDonald's. In this trial he said he recalled emailing Roueche, who told him Tran would be coming to meet them. On cross he said he believed Roueche said Troy would come but he was not 100% sure. He said it is possible Roueche did not tell him who was coming, but he does not think Roueche mentioned Barzan Tilli-Choli, who showed up shortly thereafter. He said it was most likely that Tran had been told the location, but he had no first hand knowledge of it.

- [81] W3 agreed that it made sense that he would ask Roueche where the person was who was to meet them, as they were only making a quick trip to the bathroom at McDonald's and would then return to continue watching the Mercedes as Roueche had told them to do. W3 was asked how it made sense to tell someone to meet them at McDonald's if they were only going for a bathroom break. He said it was close by and perhaps the McDonald's location was more familiar.
- [82] W3 said after they parked at McDonald's, all three men got out of the Tahoe, but he did not have to go to the bathroom, so he walked back to Jesse's vehicle. The McDonald's parking lot is covered by video cameras, and there is a video camera inside the McDonald's by the washroom. Contrary to W3's evidence, the McDonald's video shows three men leaving Jesse Adkins's Tahoe and going to the washroom and then returning to the Tahoe.
- [83] In any event, W3 testified that he saw two cars in front of theirs, a dark blue Cherokee and a black Porsche Cayenne. He noted that the black Cayenne had a licence plate associated with the Bacons. W3 saw a female and two males by the other vehicles but did not recognize them. He said he did not know what the Bacons looked like, nor did W2 or Jesse Adkins.
- [84] W3 testified that he was not sure what to do, and got into Jesse's vehicle. W2 and Jesse came out and Tran pulled up in a white Toyota Tundra that W3 had seen before. In contrast to this evidence, the video shows Tran's Tundra pulling in before the Porsche arrived. On cross-examination, W3 said their reaction at seeing a Bacon vehicle was surprise and alarm. He said no one recognized the people.
- [85] W3 said W2 and Adkins spoke to Tran, who was sitting in the Tundra. W3 said he did not recall speaking to Tran. He said there was a quick discussion and they decided to get out of there as they knew there were cameras in McDonald's and all over the parking lot.
- [86] W3 said they left the parking lot in the Tahoe, with Tran following them, and went around to the back of the parking lot by a fence on Arcola Street. W3 said he asked Tran if the people were Bacons and Tran said he didn't know. W3 asked what they should do and Tran told him Barzan Tilli-Choli was on his way. Within 2 or 3 minutes, Barzan Tilli-Choli and Karwan Saed arrived in a Maserati. Tilli-Choli asked if they had guns; he was told there were two AK47s. W3 said Tilli-Choli suggested they run around and shoot the people in the parking lot. He was told there were cameras. W3 said he does not recall Tilli-Choli walking around with the gun on Arcola Street, something W2 later testified had occurred.
- [87] W3 said Saed noticed the people leaving and commented on it. It was decided to follow them. W3 said W2 got into Troy Tran's vehicle; W3 and Tilli-Choli got into the Tahoe with Jesse Adkins driving. They drove out of Arcola Street, turned left, and headed up past the McDonald's, towards Kingsway, following the Cherokee and the Porsche. Those two vehicles turned left, or east, on Kingsway, but Jesse Adkins turned right. He was told to do a u-turn, which he did, and they proceeded east on Kingsway, passing the Tundra and pulling up beside the Cherokee. Tilli-Choli began to fire at it. Then he realized a girl was driving it. Tilli-Choli turned his attention to the Porsche, which was ahead of the Cherokee, and unloaded

eight to ten shots into it. The Porsche driver slumped forward and the car accelerated into a cinder block garage.

- [88] W3 said they headed in the Tahoe towards Marine Drive by the Fraser River, planning to get rid of the guns. W3 emailed Clay Roueche to tell them they got Jamie Bacon. They threw the gun under the bush of a house. According to W3, the other gun later showed up at Jesse Atkins' house.
- [89] W3 said he had last seen Tran on Kingsway and had no idea where he was until the Tundra pulled up behind them down by the Fraser River.
- [90] W3 said they had to hide Jesse's vehicle. W2 told them Tran had rear ended some guy at the scene of the shooting. They drove to a cul-de-sac and parked, with Tran parked behind them. They searched the vehicle and tried to find as many shells as they could, using their sleeves to wipe down the vehicle. W3 said he was not sure if Tran helped or not. He said they all jumped into Tran's truck and drove downtown to Kreshnik Ismailaj's place. Karwan Saed was there with the Maserati. W3 said Tran did not go in, but left by himself. W3 was adamant that they drove downtown in the white Tundra, which is contrary to W2's later evidence that Troy Tran left when he dropped W2 off in the cul-de-sac and they were driven downtown by someone else.
- [91] W3 said Niko gave them clothes and drove W2 home, and then W3, who then drove Jesse to his house.
- [92] W2 said he learned, possibly from Clay Roueche, that the man shot had not been a Bacon; he had been a "spot" installer, that is someone who alters vehicle storage spaces. Despite having testified that he was not in regular Blackberry contact with Tran, W2 said he confirmed this with Tran.
- [93] W3 testified that he emailed Clay to say they needed to get rid of Jesse's vehicle. He and W2 and Jesse Adkins went and cleaned it out the early the next morning. He and Adkins drove it out to Chilliwack, with W2 following. W3 said Roueche knew some people who had a car crusher. However, the crusher was not available so they drove to Merritt where an old friend lived. He disposed of the vehicle for them.
- [94] Video of the McDonald's parking lot was played for W3 who identified Troy Tran's truck. W3 said his memory of the movements of that time period is different from that depicted in the video as noted above.

Friendly Fire Incident

- [95] There was another shooting in the same area at about 1:30 a.m. on May 9, 2008, in which UN members apparently shot at other UN members who were in a Maserati. However, W3 testified that he thought that event occurred two or three months before the Barber murder. It was W3's impression that Troy Tran got grazed with a bullet in that incident, although it is unclear where he learned this.
- [96] It is the defence theory that when W3 learned that the incident was actually the earlier the same day as the Barber shooting, he realized Troy Tran could not have been injured then or he would not have been in the parking lot with his Tundra a few hours later. Therefore he changed his story to say it was Bill Ly who was injured after speaking with W2. W3 denied speaking to W2 about this incident to clarify who had been shot after having been questioned by the police in 2016. He also said W2 did not tell him he had gone out with Conor D'Monte the night Duane Meyer was shot, or that they had met up with Tran that night, or that Tran was injured.

Arrest of Roueche

- [97] It is admitted that Clay Roueche, the leader of the UN gang, was arrested on May 17, 2008 in the United States and is currently serving a lengthy sentence there.
- [98] W3 said after Clay Roueche's arrest, Roueche contacted W3 through Tran who had a dedicated cell phone.
- [99] This arrest was on May 17, 2008, a few days after the murder of Duane Meyer on May 8, 2008. Shortly thereafter, Conor D'Monte took over as leader. W3 said Conor D'Monte's acceptance as leader was announced at a large gathering of the gang at a Korean restaurant on Broadway that the gang often attended. W3 said he believed Troy Tran was at the relevant meetings as leadership was discussed, including this one but could not be 100% sure. At the Vallee trial he said there may have been others there on this occasion besides Versace, himself and Conor, but did not mention Tran by name.
- [100] W3 had originally testified that Tran had input into whether people got rings. In cross he said he had meant to say that Tran had a say in whether Conor D'Monte was elevated to leader after Roueche's arrest. He said he was confident of this, but he was not 100% certain. In any event, he said he could not say if Tran had input into someone getting a ring.
- [101] W3 said the gang was organized at this meeting into sub-groups with different captains. W3 led the Vancouver group. Barzan Tilli-Choli led the Kurds; Conor D'Monte had another group, and Tran led the FK group from Calgary, which he had always done, although the group was only Tran himself and Bill Ly.

[102] W3 testified that Tran was a highly respected member of the gang. He said he believed Conor D'Monte respected Tran; thus he was consulted over decisions. W3 said he himself consulted Tran.

[103] W3 testified that he was leaning towards leaving the gang life at this time, but Versace convinced him not to and to take on the leadership of the Vancouver side instead.

"Legs Out" Meeting and Other Events "In Furtherance of"

[104] W3 testified that later, six months after Duane Meyer's murder, the gang decided it was too dangerous to target the Bacon brothers themselves because the police were always around them. They met at the Manzo restaurant to discuss what to do.

[105] Gang dinners were of importance in the evidence of W3, W2, and W1. These were social occasions, sometimes including family members, but often to discuss business. W3 agreed it was difficult to say who was at what dinner after all this time, and acknowledged that his evidence on these points changed over time.

[106] W3 said that at this particular dinner, he suggested going after the lower level guys and maybe the gang would crumble. This was referred to as "taking the legs out" from under the Bacons. Not everyone agreed with this approach but that is what they decided to do. Bounties were set: \$50,000 for mid targets, \$25,000 for low, \$10,000 for line workers.

[107] W3 said he did not recall if Tran said anything at this meeting, but testified that Tran was there, along with Versace, Bill Ly, Barzan Tilli-Choli, Gotti, Niko, Nammer, JSP, Karwan and others. However, in one statement to the police concerning this dinner, W3 did not mention Tran as being at the dinner, and in another he said he believed Tran was there. He agreed that it is difficult now to say who was at what dinner. People were expected to go but did not always show up.

[108] It was pointed out to W3 that he often qualified his evidence regarding Tran by saying he "believed" he was there, or "he may have been there". He said he was fairly confident in his evidence but not 100%. He said he created a timeline to help himself remember events. He agreed that, for some details of his testimony, he realized he had created a false memory for his statements and for the Vallee trial.

Other Events

[109] The Crown led evidence of many incidents that did not involve Mr. Tran, apparently to show how widespread and reckless the conspiracy was.

[110] For example, W3 testified that a member of the conspiracy nicknamed Gotti got information that the Bacons would be at a concert at GM Place in late 2008. The admissions place this incident in January 2009. W3 said Tilli-Choli wanted to spray the Bacon limo with bullets. Cory Vallee and Jesse Adkins contacted W3 and Conor D'Monte and told them Tilli-Choli's plan was ridiculous. W3 agreed that the plan was ridiculous.

- [111] W3 described various other incidents which he was not present for - apparently Cory Vallee and Jesse Adkins had Dennis Karbovanec, a noted Bacon associate, in their sights when their gun jammed and Karbovanec escaped unharmed. A couple of young men, referred to as Whitey and Smurf, were to help set up Karbovanec but were killed themselves, W3 thought probably by UN members.
- [112] W3 testified to various other plans the UN gang came up with to kill the Bacon group, including rocket launchers and bombs and cyanide capsules. They also discussed bombing the Bacon brothers' parents' house. He said they actually built a bomb. Nothing came to fruition, but W3 testified he sold the bomb to Tran and Bill Ly in 2009.

Leclair Murder, February 6, 2009

- [113] W3 testified that he was with Cory Vallee, Jesse Adkins, W2, and Kreshnik Ismailaj on February 6, 2009 when they were targeting Kevin Leclair at a local mall in Langley, B.C. Leclair was known as "Traitor" because he had once been associated with the UN gang but then joined the Red Scorpions. There was a \$50,000 bounty on his head. W3 left the group to go package drugs with another associate in Richmond. According to W2, who was present throughout, Leclair was murdered by Cory Vallee and Jesse Adkins.
- [114] W3 said W2 asked him to ensure the person W3 was with would give W2 an alibi. W3 could not say if he himself would have provided a false alibi for W2 if his friend refused to, but admitted he was not unwilling to commit perjury.
- [115] W3 said Cory Vallee and Jesse Adkins were paid by Conor D'Monte for shooting Leclair, and Cory Vallee subsequently got his ring at a ceremony in Edmonton. W3 said Tran was there.

Things Begin to Fall Apart For the UN Gang

- [116] W1 began to cooperate with the police in early 2009. A number of prominent UN members were arrested in mid 2009 and were in jail.
- [117] W3 said he was in infrequent communication with Tran by 2009.
- [118] W3 said Cory Vallee and Jess Adkins were sent to Mexico in 2010 because there was too much police attention. Conor D'Monte, who had taken over as leader for Clay Roueche after Roueche was arrested in early 2008, also left the country.
- [119] W3 testified that Jesse Adkins, still in Mexico with Cory Vallee, was considered a danger to the gang because he told Vallee he wanted to return to Canada to see his child, so he was killed in Mexico in 2011 or 2012 at the instance of Khamla Wong, and with the agreement of W3 and W2.

Trip to Winnipeg

- [120] Around the time that Conor D'Monte fled the country, that is later in 2010, according to W3, W3 learned that W1 had agreed to testify for the Crown, and was out of the country. W3 hired a man to kill him. This was unsuccessful.
- [121] W3 testified that, after some time had elapsed, perhaps in late 2011 or early 2012, he went to Winnipeg with Tran to meet members of the Rock Machine from Quebec. He agreed that the meeting had two purposes: to explore a future alliance, and to pay them \$50,000 in cash to hunt for W1. W3 said Tran got the \$50,000 from Versace, although he acknowledged that Tran was on the outs with Versace at this time. He said in cross-examination that he was not at the meeting with Tran and the Rock Machine so does not know what was said.
- [122] W3 said he made more than one trip to Winnipeg, but Tran went only once. W3 had hired another person to kill W1 but that was unsuccessful. Several other attempts were also unsuccessful. Other associates were beginning to cooperate with the police.
- [123] W3 said Conor D'Monte also made efforts to find W1, all unsuccessful. D'Monte had a team fire bomb and shoot up W1's parents' house, although D'Monte had already left Canada himself.

W3 Becomes Boss of UN

- [124] W3 said he, Troy Tran, Versace, and others went to Vietnam for a meeting after Conor D'Monte left Canada. They were also there for Versace's birthday. W3 was made boss of the UN gang. Versace convinced him to stay with the gang and made the decision about leadership. He could not say if there were others present who were not UN members. W3 said on cross-examination that he did not know if Tran and Ly had an association with Vietnamese members through Versace. He said Versace later cooled towards Tran because of things Bill Ly said about him.
- [125] W3 said he got some disclosure related to Barzan Tilli-Choli through a crooked prison guard; Tran delivered it to him on a USB stick sometime in 2011. This contained some statements from W1. W3 said he was shocked to learn W1 had been cooperating since 2009. He said Clay Roueche had been suspicious of W1 for some time but W3 did not know W1 well enough to assess him.
- [126] W3 said JSP began to cooperate with the police in 2012 or 2013. W3 said the gang was not surprised and there was no discussion of killing him; JSP was not violent and he was not a gangster. He was interested only in money.
- [127] W3 said a new war had developed with a new gang, the Wolf Pack, that appeared to have some connection to the Bacons, and Versace wanted this new gang dead. W3 participated to some extent but he said most of the UN gang wanted nothing to do with it.

Justice Institute

[128] W3 testified that Conor D'Monte contacted him in 2011 telling him he needed to have some houses shot up because his friends were being tailed by drug rip offs. W3 found Kelly Hurst who agreed to do it. They shot up some houses and were paid. Later W3 realized these were houses belonging to people connected with the Justice Institute, a local law enforcement training centre, and was very angry at being tricked into doing this. This did not involve Troy Tran.

Tax Case

[129] Various members of the UN gang brought an action in Federal Court to do with taxes. All three witnesses agreed that Tran was not part of this.

Kim Bolan

[130] W3 and W2 and Conor D'Monte (who had fled the country by this time) put together a scheme to target Kim Boland, a newspaper reporter, because they felt she favoured the Bacons. There is no suggestion Troy Tran was part of this.

Photos

[131] W3 identified many pictures of gang members and associates with Troy Tran at various social gatherings, aside from the large group picture from Evan Appell's funeral: there were photographs of himself, John Sheaves, Khamla Wong, Versace, and Niko.

[132] W3 identified Troy Tran in photographs at a variety of settings, including some with himself. Some of the photographs were with Versace or Khamla Wong, which W3 said he assumed were taken in Thailand or Vietnam.

[133] W3 said the men who were hired as shooters for the UN gang, that is, Cory Vallee, Jesse Adkins, and John Sheaves did not attend dinners or public events and were kept away from cameras.

Arrest

[134] W3 said he and Troy Tran organized a dinner for what was left of the UN gang in December of 2015. By this time, W3 was still involved with the gang but was working at a regular job. He was doing well and expected a promotion.

[135] W3 and W2 were arrested in January of 2016, along with Troy Tran and Bill Ly. W3 and W2 agreed to cooperate and were released, which W3 said made the other two suspicious. W3 and W2 did a short time in jail and were released.

W2

- [136] W2 was present at both the Barber and Leclair murders. He signed an immunity agreement after his arrest in January 2016. Like W3, he did not think the police had a strong case against him for the murders, but he realized W3 was facing serious time in jail for the guns and drugs and so he also decided to cooperate.
- [137] W2 left the gang in 2012 after Jesse Adkins was killed. He acknowledged that he had initially fooled himself into believing it was in 2009 after his daughter was born, but eventually realized this was not the case.
- [138] W2 testified to a long list of violent acts, including hiring Cory Vallee and Jesse Adkins to kill a former drug associate, one he had not seen for years but hated. Vallee and Adkins only wounded the man but W2 paid them \$20,000 each and let the matter go. W2 managed to avoid a criminal record, although he had one discharge resulting from a charge over a fight in Whistler.

Meeting Troy Tran

- [139] W2 testified that he recalled meeting Tran in 2004, but he did not know him that well. He considered him a friend but he acknowledged he was really just an acquaintance. He said he only saw him at social events and would not see him for long periods of time. He said Tran and Bill Ly were regulars at events when they were in town, and he met them at a "show of force", a group outing that Clay Roueche organized to show how powerful the gang was and to boost recruitment.
- [140] W2 told the police in an earlier statement that he had no recollection of an initiation ceremony for Tran and did not know if he was a member of the UN gang. However, he maintained at trial that Tran was a well-respected member of the UN.
- [141] W2 testified that he saw Troy Tran with a UN ring, but in an earlier statement which was put to him in cross-examination, he said he did not recall if Tran had a ring. He said to his memory in that point of time, it was true. In that same statement, W2 said he would say Tran was a member of the UN, or was looked at as a member, but Tran was from Alberta so he was more FK. He also said in that statement, that he did not know how it was decided that Tran would become a member, or how Clay Rouche met him.
- [142] W2 said Conor D'Monte told him Versace (Manh Nguyen) wanted the main group to take care of the Bacons and not bring in the "Nammers". No explanation was offered as to who the Nammers were, but they are apparently Vietnamese. W2 said in redirect that he never met the Vietnamese side; they were completely separate from the UN.

[143] W2 said he had no business with either Tran or Bill Ly, who were both from Calgary, and he did not have either on his Blackberry. W2 said he assumed "T" on the seized Blackberry address book shown to him during his testimony is Troy Tran. That is the only nickname he associated with Tran. He said perhaps TRex was as well, but he never heard it used.

The Bacon War

[144] W2 said the group would always discuss the Bacon Brothers. The dispute started in the early 2000s, but he had no interest in it until Duane Meyer was murdered on May 8, 2008. This was the first time the Bacons had actually killed a UN member. He said the Bacons were then considered a serious issue in all their lives and the UN gang wanted them wiped off the planet. He said a dossier of Bacon photographs was sent out after Duane Meyer's death.

[145] W2 testified that he had no knowledge of Troy Tran doing anything specific in the hunt for the Bacons. He said Tran was never on a crew and had no specific role in the UN gang. W2 said that other than their connection the night of the Barber murder, he was never alone with Tran.

[146] W2 said there was a designated team put in place: Adkins, Vallee, and John Sheaves. These shooters were to be kept low key. He said he heard this from Conor D'Monte.

[147] W2 testified that he was devastated at the news of Duane Meyer's death. He said Meyer was a dear friend. He went out to hunt for locations associated with the Bacons with Conor D'Monte that night.

Friendly Fire: 1:30 a.m. May 9, 2008

[148] W2 testified that he and Conor D'Monte met Amir Eghtesahd in a Wendy's parking lot. There was another person there whom W2 originally identified as Troy Tran, but in this trial he said it was Bill Ly. This person had been shot in the shoulder.

[149] W2 admitted that he had testified at the Vallee trial that the person he saw at Wendy's was Troy Tran. He had always identified Troy Tran as the person who had been shot, but he said he realized later he might have been mistaken, and he asked W2 about it. He said W2 did not recall the incident. It was suggested he changed his story after realizing if Troy Tran had been shot earlier that evening he could not have been the person in the Toyota Tundra at the McDonald's later that night when Jonathan Barber was shot. He denied changing his story after discussion with W3 or with the police. He said he always grouped Bill Ly and Troy Tran together as stocky Asians from Calgary, and to this date he is not sure which one it was.

Barber Murder, 9:30 p.m., May 9, 2008

- [150] W2 testified that W3 emailed him later on May 9, 2008 and asked if he wanted to go out looking for Bacons. He said he had to be convinced but eventually he, W3, and Jesse Adkins headed to the Burnaby "office" the night after Duane Meyer was killed. They were in Jesse Adkins' Tahoe. W2 said he did not have a weapon, but he had a bullet proof vest on, given what had happened to Duane Meyer.
- [151] W2 said the weapons were wrapped up in a green and cream blanket he recognized from W3's house. The weapons belonged to him and W3. At trial he said he lifted up the blanket to look at the guns, and in the Vallee trial he said he stepped on them. He said he did not recall that but it is logical. In his statement to the police he said W3 and Adkins lifted up the blanket to show him the guns, but he said that was inaccurate and he has noticed many inaccuracies in his statements and has tried to correct them.
- [152] W2 said W3 told him they were going to the UN office to drop off AK47s to a safe house; the Bacons were right next door so the guns could be used to take them out if the opportunity presented itself. W2 agreed in cross-examination that all he knew is that W3 told him they would be meeting Troy Tran there.
- [153] W2 said Conor D'Monte had given him a list of addresses the night before. He said his intention the night of the Barber murder was not to go out hunting, but to scout Bacon locations and vehicles, show the others what D'Monte had showed him, and drop the guns off, although he acknowledged that the reference to dropping the guns off was not in his admission of facts for sentence. W2 said if they spotted a Bacon they planned to send a message and hopefully try to eliminate them. He said he was not a hitter himself but would assist in "whatever logistics was required."
- [154] W2 said they saw a Mercedes near the Bacons' office building and verified the plate as belonging to the Bacons. W2 said W3 and Jesse Adkins told him that Clay Roueche told them Barzan Tilli-Choli would come and meet them.
- [155] According to W2, Adkins and W3 had to go to the bathroom so they drove to McDonald's. Another vehicle pulled in and W2 saw three "heatbags" in it, that is, Caucasian males with hard faces, wearing hoodies, whom he took to be gang members. The three went to the washroom and headed back to the Tahoe. W2 noticed Troy Tran had pulled in, driving a white Toyota Tundra that W2 had not seen before. He said he did not know what brought Tran to the McDonald's parking lot. He had not emailed him himself; he assumed W3 had.
- [156] W2 testified that he walked over to talk to Tran and noticed a camera on the side of the building.
- [157] W2 testified that Tran said to him: "Holy fuck, that's them, right there." "Who?" "The fuckin' Bacons, right there!" W2 said he realized it was the heatbags he had noticed earlier.

- [158] W2 said Tran said "Fuck, should we do it right there?", which W2 took to mean to shoot them. W2 said "No, we're on camera." He said Tran suggested they pull out of the parking lot and meet on the street. Tran reversed out. W2 said he got back in the Tahoe, told W3 and Adkins it was the Bacons, and they would meet Tran on the street.

The Video

- [159] W2 admitted that the video from the McDonald's camera contradicts much of what he testified to. The Porsche did not pull into the McDonald's parking stall until after the three came out of the washroom. In fact, the Tundra arrived first, which is before anyone recognized any persons or plates.
- [160] W2 is certain he saw three men in the Porsche before he went into the washroom, which is not correct. According to Jonathan Barber's girlfriend, who drove to the parking lot with Jonathan Barber, there were only two men - Barber and another man - who stood talking and she never got out of the Cherokee.
- [161] W2 was adamant that the people were recognized by Tran, as opposed to W3's evidence that W3 recognized the licence plate. W3 maintained that he told W3 and Jesse Adkins that Tran had recognized the individuals. He said if he had recognized the Porsche Cayenne as a Bacon vehicle before they went into the washroom, he would not have gone in. He said the Cayenne was there before but the people were not recognized.
- [162] As well, the video shows two men from the Tahoe standing by the Tundra, apparently talking to Tran, not one as W2 said; in addition, the Tundra did not lead the way onto the side street. It followed the Tahoe about twenty seconds later.

Arcola Street

- [163] In any event, W2 testified that both cars parked behind the strip mall on Arcola near a fence, and Barzan Tilli-Choli arrived in a sedan of some sort; W2 could not recall who was with him. Tilli-Choli, whom W2 said was crazy, aggressive, and full of bravado, asked if they had any weapons and was told they did. Tilli-Choli was prepared to shoot the people then, despite being told they had been on camera. W2 said Tilli-Choli put on gloves, got the gun set up, took it, and jogged down the street, and came back. At some point he tried to get through the fence to the strip mall.
- [164] W2 said someone noticed the cars leaving. Tilli-Choli told the man he had arrived with to take his car and leave. Tilli-Choli got in Adkins' vehicle. W2 testified that he did not want to be in the shooter vehicle so he got in Troy Tran's truck, and hoped W3 would come with him. However, W3 got in the Tahoe with Adkins and Tilli-Choli.
- [165] W2 testified they followed the Porsche to the light onto Kingsway; they saw Adkins turn right, or west, even though the Porsche turned left. W2 said Tran's Tundra, which is the vehicle he was in, was about five cars back, stuck at the red light. Then he saw Adkins

heading east on Kingsway, in pursuit of the Porsche. Tran went east as well. W2 heard shots. They came across the Jeep Cherokee stopped in the left lane. W2 said Tran stopped behind it and sat there, appearing stunned. W2 said to him: "We can't stay here, move!" He said Tran reversed into the vehicle behind them, and again appeared stunned. W2 told him to "get the fuck out of here bro". Tran finally pulled out and around. They headed east on Kingsway and passed the Porsche, which had crashed into the garage. W2 said Tran was quiet and nervous the whole time.

- [166] In cross-examination W2 adopted his earlier statement that Troy Tran was not using the Tundra as a blocker vehicle nor was he assisting in the pursuit in any way.
- [167] W2 said he emailed W3 and Clay Roueche, and then directed Tran to where the other vehicle was. He said they found the Tahoe near Marine Drive. Everyone was excited and happy. W2 said they stopped and one of the men from the Tahoe stuffed the gun into some bushes. They drove to a cul-de-sac and W2, W3, and Adkins searched for shell casings. W2 said Tran said he had to go and he left. Tilli-Choli's driver arrived and picked them up and took them downtown to Niko's (Kreshnik Ismailaj).
- [168] W2 said W1 came and picked up Barzan Tilli-Choli because his driver told them he had to go to work, which, to W2, meant drug business. W2 said Niko gave them a change of clothes and drove W2 and W3 a ride home; W2 was dropped off first. He does not recall giving Adkins a ride.
- [169] W2 said he found out the next day, possibly from Clay Roueche, that it was not a Bacon brother who was hit; it was the man who installed "spots" in their cars for guns and drugs. W2 said he confirmed this with Tran. He said that was the only time he had Tran on his Blackberry as he changed Blackberries every six months, and did not do business with him.
- [170] W2 said he, W3, and Jesse Adkins met up. Adkins had retrieved the Tahoe. They drove the vehicle to Clay Roueche's father's scrap metal company. However, the compactor was not there and Adkins' car insurance was going to expire that day or the next, so they called a friend and asked if they could come up to his place in Armstrong/Enderby area. He agreed and they drove up with W2 acting as a blocker car behind Adkins so the licence plate was not visible.
- [171] W2 testified that following the Duane Meyer murder, he spent a lot of time searching for the Bacons, hunting them at least twice a week. He received a list of vehicles and licence plates the night of Duane Meyer's murder, and got a dossier of photos from Clay Roueche at some point. He got a list of licence plates from Conor D'Monte which grew as time went on.

Bounties

- [172] W2 said bounties were put in place after Duane Meyer's murder. He said he was not present when they were set but he was at a discussion of them at a dinner at the Korean restaurant which was frequented by the UN gang. W2 was told by W3 and other members of the UN

gang that there was initially \$50,000 on each Bacon brother, then up to \$200,000 for Jamie, Anton, Dennis Karbovanec, and Matt Johnson. There was money on others but he couldn't recall how much. He said W3 told him the Haney chapter of the Hell's Angels had given Clay Roueche \$100,000 towards the Bacon war because the Bacons were targeting the son of a Hell's Angel. W2 testified he believed this was part of what started the war.

- [173] W2 said after Clay Roueche was arrested shortly after the Barber murder, Conor D'Monte became the leader of the gang. W2 became treasurer of the gang, supposedly to set up a lawyer/jail fund. W2 said the gang paid lip service only to this. Later, after D'Monte fled the country, W3 became the leader of the gang.

Leclair Murder, February 6, 2009

- [174] W2 was present at the shooting of Kevin Leclair, a Bacon associate nicknamed "Traitor" because he had formerly been connected to the UN gang. This occurred on February 6, 2009. W2 testified that he was there, along with Niko, Cory Vallee, and Jesse Adkins. Troy Tran does not feature in this scenario at all so although detailed evidence was called about the event, I do not plan to recite it.
- [175] Briefly, in their continuing hunt for the Bacons, members of the gang learned that Kevin Leclair was having lunch at Brown's Social Club in Langley, B.C. W3 had been with the group but had gone to Richmond to meet an acquaintance to package drugs.
- [176] W2, Jesse Adkins, Kreshnik Ismailaj and Cory Vallee staked out the location. When Leclair walked to his vehicle, he was shot and killed. According to W2, Cory Vallee and Jesse Adkins were the shooters, and Vallee was convicted of this offence by Madam Justice Dillon in June of 2018.
- [177] W2 asked W3 if he could get his acquaintance to provide him with an alibi. W3 agreed.
- [178] W2 paid Jesse Adkins and Cory Vallee \$20,000 for the Leclair murder, at the request of Conor D'Monte. W2 said he remained in contact with Vallee after he and Adkins went to Mexico. Cory Vallee was charged for the Leclair murder. W2 said Vallee found it funny that he was also charged with the Barber murder on the basis of W1's mistaken identification of him on the McDonald's video.
- [179] Like W2's testimony on the Barber incident, some details of W2's evidence did not accord with the video evidence available from a nearby Tim Horton's, but W2 preferred his memory, which he said was crystal clear.

After the Leclair Murder

- [180] By mid 2009, W1 was cooperating with the police and eight members were arrested.
- [181] W2 said both Jesse Adkins and Cory Vallee were told to go to Mexico after the Leclair murder. They both had too much police attention, Adkins particularly.

- [182] W2 testified that he and W3 and others felt Adkins could not be trusted to deal with things on his own. W2 testified that he heard from Cory Vallee that Adkins wanted to come back to see his child. Khamla Wong said he would handle it and Adkins would be killed. He was killed around Christmas in 2011. W2 told Adkins' family that Adkins had been put in the witness protection program.
- [183] W2 said coincidentally some UN gang members were arrested charged at this time so this lent credence to his story.

Photos

- [184] W2 identified many pictures of gang members, Troy Tran was in a number of them with Khamla Wong, Versace, Niko, and Bill Ly, among others.

W1

- [185] W1 was the first of the UN gang to approach the police with a view to cooperating.
- [186] W1 grew up in the Fraser Valley and began his career as a drug trafficker while still a teenager living at home. He was convicted of manslaughter in 2005 and sentenced to a term of imprisonment. He met Clay Roueche prior to his sentencing. He had been working for a couple of drug traffickers and he knew Roueche was their supplier and was well respected. W1 met a man named Roy Kenshin Lee who was also in prison and became close to him after Clay Roueche vouched for him to Lee. He also met Jon Kriotoru in prison. Kriotoru is a UN associate and admitted member of the conspiracy.
- [187] Of the three Vetrovec witnesses, W1 knew Troy Tran best. He testified that Tran and Mark Kim, who both came from Calgary, were taken on as bodyguards for Clay Roueche around 2006, and although he was reluctant to play babysitter for them, he was given the task of showing them around.
- [188] During intercepted conversations between Roy Lee and Clay Roueche, reference is made to a "broski with the mole". According to W1, only Troy Tran could be "the broski with the mole". He said one of Tran's nicknames was "Mole"; Tran had a mole on his chin with a substantial amount of long hair growing out of it. W1 said he associated the nicknames Mole, T, and TRex with Tran. W1 said Troy Tran gave W1 his own nickname.

Meeting Troy Tran

- [189] W1 said he met Tran after W1's statutory release from prison, at lunch with Clay Roueche. Mark Kim, Tran's associate from Calgary, was also there. W1 knew them only as "T" and "Blackie". He said he got to know them independently of Roueche and spent time with them. They were associated to a gang in Calgary called the FK. He also met Bill Ly from Calgary, who came and went. W1 said he learned Troy Tran's first name in 2006 or 2007 and his last name later.

- [190] W1 said Tran and Kim were actually living in Abbotsford, although they went back to Calgary from time to time. W1 testified that he thought Roueche respected and listened to Tran, which was not the case with the Kurds, another faction of the UN gang. W1 began to hang around with Tran and Kim. Clay Roueche asked him to show them Bacon locations, which he did. Roueche did not give W1 a reason for doing this. W1 assumed it was to keep an eye on the Bacons, perhaps to commit some kind of act.
- [191] W1 testified that Roueche talked up Tran and Kim as trustworthy and reliable. W1 did not know what their role was, but at some point Tran and Kim took over from the Kurds as Roueche's bodyguards.
- [192] W1 testified that his role in Clay Roueche's drug business increased and once he became busier he saw less of Tran but they kept in touch by Blackberries. He had him as "T" or "TRex". W1 said Roueche and Tran were in business together; Tran was investing in Clay's cross-border drug business.
- [193] W1 said Tran was living in the Lower Mainland but went to Calgary with some regularity. At first he lived in a basement suite with Mark Kim. He then bought a house from another UN member and Mark Kim moved back to Calgary. Tran lived in a condominium in Burnaby before Clay's arrest and after Mark Kim's death, which W1 said was at New Years in 06/07 or 07/08. Although not sure of the date, he decided it had to be New Years of 07/08.
- [194] W1 said he saw Troy Tran and Mark Kim a lot in 2006, less in 2007, and by 2008, Mark Kim had been shot. W1 said he gave several guns to Tran after Mark Kim's murder in Calgary. Tran was happy about this and this added to W1's prestige. He did not see Troy Tran that often by then, although had Blackberry contact with him, and saw him at dinners. W1 said Tran had a UN ring but he did not wear it often. He said Tran was at every ring ceremony he attended.
- [195] W1 said Tran was careful, collected, and methodical. He was very smart and well respected. People deferred to him. He agreed that Troy Tran is a careful person and does not say much.

Bacon War

- [196] W1 said he was aware of the conflict with the Bacons before he went to prison; he said it was local, a low level drug dealer problem. It had escalated by the time he got out of prison. Clay Roueche was shot at and got bodyguards as a result. When Tran and Kim took over as bodyguards, W1 showed them various Bacon locations at Clay Roueche's request - Jarrod Bacon's apartment, the Bacon parents' house, a deli, a pizza place. He said this was before his warrant expiry date.

- [197] W1 testified that people talked constantly about the Bacon conflict and what was being done about it. The Bacons were expanding and angering other groups including the Hell's Angels. Rewards were offered for killing or injuring a Bacon or an associate - for instance, Dennis Karbovanec, Kevin Leclair, and others. W1 said he distributed a photo of Dennis Karbovanec to a lot of people including Tran.
- [198] W1 said when Dave Tumber, a Bacon associate, was shot, which was in March 2006, things calmed down for awhile, and then the Bacons resumed their expansion. Roueche approached the Hell's Angels to form an alliance. W1 said the Haney chapter paid \$50,000 to Clay Roueche for "the war effort".
- [199] W1 said Rewards were put on the Bacons. Jonathan Bacon was shot and wounded on September 21, 2006 in his parents' driveway, a location W1 said he had scouted with Tran, Kim, and Ly. Ciaran D'Monte, a UN associate and brother of Conor D'Monte, was shot and wounded on September 22, 2006. W1 was mistaken in the timeline he testified to as he thought this shooting was after Clayton Eheler was shot in February of 2007. Conor D'Monte, a UN member from Vancouver, entered the conflict after his brother Ciaran was shot. Jonathan Bacon recovered and the conflict continued.
- [200] W1 said the scouting became more purposeful and intelligence gathering was more focussed. Roueche told W1 to send out pictures of the Bacons; W1 provided these pictures to the police when he began to cooperate in 2009 and they matched photos seized from Roueche's property after his arrest in May of 2008, with W1's fingerprint on some of them. W1 said he sent lists of information to Tran but not very often. Tran had moved to Vancouver and was not in the Valley anymore. During the period before Duane Meyer's death W1 said he sent pictures out of the Bacons and Dennis Karbonavec; he said he sent them to Tran.
- [201] W1 said Clay Roueche had moved to a new location that was not known to the Bacons so he did not require body guards as much. This was before Mark Kim's death at New Year, 2007/08. W1 said Tran moved from guarding Clay Roueche to guarding Versace (Manh Nguyen).
- [202] W1 said the gang was making money and had other interests, but Clay Roueche talked of needing professional help to deal with the conflict. He had made a commitment to the Hell's Angels and they had paid him, and he needed someone on it all the time. Cory Vallee was brought in as a hit man in early 2008. W1 was told he was from back east, and had to be shown around. W1 did this, but resented it as it cut into his time and he was very busy with his drug lines. W1 said he complained to Clay Roueche about having to use his time this way and others were brought in to help.
- [203] According to the other witnesses, Cory Vallee, although touted as being connected to Quebec gangs, had actually lived and worked in North Vancouver and did not need anyone to familiarize him with the Vancouver area.

- [204] W1 testified that he, Vallee, and JSP were pulled over in W1's black Toyota Tundra on February 25, 2008. They had been scouting out Mike Le's building. No one in the car knew each other's names; they all went only by nicknames, which they thought would be suspicious to the police. W1 asked Vallee what his name was and was told it was Cory.
- [205] W1 said he obtained a white Impala for Vallee; such a vehicle was observed by the police in various UN locations.
- [206] W1 said there were lists of Bacon vehicles and licences which were updated as intelligence arrived. According to W1, information would be forwarded from time to time to Tran but he had moved to Vancouver by then.
- [207] W1 said at one point, W1 and Clay Roueche went to look at an apartment building to determine if Jamie Bacon lived there. They were at a restaurant with Versace and Tran when information came to them confirming it as a Bacon location. They decided they would try to film cars going in and out of the building to confirm that Jamie Bacon lived there but the film was blurred by rain and unusable.
- [208] W1 said this was before Duane Meyer was killed.
- [209] W1 described hunting trips organized by Clay Roueche. He said they would meet at the Mission hospital parking lot, discuss their plans, and divide into subgroups to set out on surveillance of the Bacons. W1 said Tran was there as a regular face, although he cannot say he was at any particular meeting. He said they were all similar and blur together. W1 said he considered these scouting expeditions a waste of time and would make excuses not to go, as did others. On cross-examination he agreed that he had not mentioned Troy Tran being there in his initial two statements.
- [210] W1 testified that when these groups went out, action was not the purpose but it would happen given the right circumstances. They realized planning and thought were needed. The trips were to confirm locations, and they would then plan to eliminate the Bacon brothers or associates.
- [211] Although W1 gave evidence placing Tran on various Bacon scouting expeditions, W3 testified that W1 himself never participated in hunting or reconnaissance for the Bacons as far as W3 knew. Despite W1 testifying that he became close to Troy Tran, W3 said Tran did not mention W1 often nor did he indicate he spent time with him.

Eagle Road

- [212] W1 described trips to a farmhouse in Mission (Eagle Road) to confirm some information Clay Roueche had received that Dennis Karbovanec, a Bacon associate, lived there. Their plan was to spray the house with bullets. W1 said he could have gone once by himself, but Tran went with him a couple of times, and possibly Bill Ly, after Mark Kim's death and before Duane Meyers' death, which would be early 2008. W1 said Tran drove while he timed the distance from the road to Doug Vanalstine's place, a UN member who lived nearby. That

place was vacant and they thought they could use it as a staging area.

- [213] W1 said they put their plan into action with Duane Meyer to be the trigger man, and drove to the farmhouse. W1 said Tran was driving. The plan was to fire at the farmhouse, although they were not sure anyone was home. However, dogs and floodlights thwarted their plan.
- [214] W1 had not mentioned this incident in his first statement to the police in 2009. However, in a later statement he told the police he and Tran checked out this location at Clay's request, but he did not mention going to shoot at it. At the Vallee trial he said he, Tran, and Duane Meyer went there, with a plan for Meyer to shoot at the house.
- [215] W1 said this event took place prior to Clay's arrest and after Mark Kim's death, so early 2008.
- [216] W1 agreed in cross that the plan to shoot at the farmhouse was a really stupid one and he was not happy about it, but Roueche said Duane Meyer was going to do it and that meant it was going to be done. He said everyone knew the conflict had to end, but W1 questioned why they would do meaningless things. He said this wasn't meaningless but it was stupid.
- [217] The admissions contain reference to two incidents of police attendance at the Eagle Road house in April of 2008 - a kicked in door and an alarm and fire. There were no bullet holes noted. W1 later took the police to this house in 2011 and said this is where he believed Karbovanec had lived in 2008.

Meyer Murder; Barber Murder

- [218] W1 testified that he did not know Duane Meyer very well and did not see him around that often. He said Duane Meyer was a busy single father involved in the helicopter transport of drugs.
- [219] W1 said the Meyer murder hit the UN gang hard; they had not thought the Bacons were capable of gathering intelligence that would allow them to kill Meyer at his nanny's house. It was a wake-up call to show they were smarter and more capable than the UN gang had thought. Anyone could be a target.
- [220] W1 said that prior to this, he and others had considered hunting the Bacons was a waste of time. They were past being concerned with them and would make excuses not to be involved. He said the group had side-stepped their responsibilities but now it was considered shameful to do so. They had to show an increase in effort: kill the Bacons and bring their organization to an end.
- [221] W1 went to Duane Meyer's funeral and testified that he believed Tran was there but could not recall if he showed up in any of the pictures. He said the Calgary group, that is Tran and Ly, were concerned about the murder of Duane Meyer but were a little removed.

- [222] W2 had testified that W1 came and picked up Tilli-Choli from Kreshnik Ismailaj's house the night of the Barber murder. However, W1 said he did not have any knowledge of the events of the night of the Barber shooting - the "friendly fire" incident or the Kensington off-ramp shooting - and in fact, it was established that he was returning to Canada through YVR that night.
- [223] W1 said he learned by Blackberry the night of May 9, 2008 that Jamie Bacon had been shot, but although his reaction was to celebrate, he thought it was too good to be true. He then learned it was not Jamie Bacon who had been shot; he had a brief conversation with Amir Eghtesahd who told him "Spaz" (real name not provided, but it is not Tilli-Choli) did it, but other than that there was no discussion of it. The Barber murder was considered a negative thing, not good for the gang.
- [224] W1 was shown the McDonald's video. W1 said one of the men walking into and out of the washroom, wearing a hooded jacket and a white cap, "looked like" Tran. The Crown does not rely on that identification and does not suggest Tran was one of those men. W1 identified another of the males as either W2 or W3, and another as Cory Vallee, another identification upon which the Crown does not rely.
- [225] W1 said Tran owned a white Toyota Tundra exactly like the one in the video from the McDonald's parking lot. W1 said he had a black one of the very same model which Tran had admired and had therefore decided to buy one like it. He said Tran's Tundra was registered in Calgary which is consistent with it having no front licence plate.
- [226] W1 agreed in cross-examination that he could not say 100% that the truck was Troy Tran's, but it was consistent with a truck he knew him to have. As well, he was not 100% certain the man in the white cap was Troy Tran, but he believes it is and offered to list the reasons why.
- [227] There is independent evidence that Tran's father, who lives in Calgary, had a Tundra registered to him with the same licence plate as a white Toyota Tundra vehicle driven by Tran while under surveillance.

Clay Roueche's Arrest, D'Monte Takes Over

- [228] W1 said at the time of Clay Roueche's arrest, which was after the Barber murder, Conor D'Monte, Tran, JSP, Versace, Tilli-Choli, Amir Eghtesahd, Karwan Saed, Nammer, Niko, Bill Ly, W2, W3, and himself were the core members of the UN gang.
- [229] He said Tran and Ly were living permanently in B.C. by then.

- [230] W1 said at the time of Clay Roueche's arrest Roueche was not bringing in as much drug money as D'Monte was. D'Monte did not run things by Clay Roueche. W1 said D'Monte was unanimously elected leader at a meeting at the Korean Barbeque. All core members were there. Groups were reorganized into geographical areas with captains and right hands. Bill Ly would be Versace's right hand man. Troy Tran was head of the Calgary group, which was only himself and Ly, and would continue.
- [231] W1 said Conor D'Monte was more aggressive than Clay Roueche and actively pressed people to be engaged in the Bacon war. More people were added to the target group and rewards were increased.

"Legs Out" Meeting

- [232] W1 testified that the group met at a Japanese Restaurant in Richmond and agreed that everyone associated with the Bacons would be targeted. This was referred to by W2 or W3 as "taking their legs out from under them". In W1's earlier statement, he had not mentioned Troy Tran being there at this meeting. He also did not mention that he himself was there; he said this was because he was minimizing his involvement at that time. As well, he says there were many meetings and his memory gets mixed up. In one statement he said Clay Roueche was there, although the meeting took place after his arrest.
- [233] W1 said he thought the idea of targeting the lower level Bacon group was stupid. He said it would not solve the problem and people dying was not good for money making.

Leclair Murder, February 6, 2009

- [234] W1 was not present for this murder. The only evidence he offered that might have a connection was that he, Bill Ly, Troy Tran, Versace were at a spa in Richmond sometime before this murder. Amir Egtesahd, Tilli-Choli, possibly Kreshnik Ismailaj, and Karwan Saed came in and said they had information about Traitor (Kevin Leclair) being seen at Walnut Grove in Langley. They all left to investigate it.
- [235] A few weeks later W1 heard about a shooting at the IGA near that location.

Whitey and Smurf Murders and Decision to Cooperate with Police

- [236] W1 testified that he had arranged for two young men named "Whitey" (Ryan Richards) and "Smurf" (Sean Murphy) to provide information to the UN gang about the Bacons. He trusted Conor D'Monte to look after them while W1 was out of the country. When Whitey and Smurf were killed in March of 2009, W1 was convinced Cory Vallee and D'Monte were responsible. He said he was disillusioned; Roueche was gone and the group had mutated. W1 did not agree with targeting the Bacon workers. He did not want to go to jail again.
- [237] W1 testified that he was moving to a foreign country. He approached the police soon after the Whitey and Smurf murders with an offer to cooperate.

Previous Convictions and Acts of Violence

- [238] W1 was convicted of manslaughter arising out of a drug deal gone wrong, pleaded guilty, and was sentenced to four years. He was released in the spring or summer of 2005. He admitted that he lied to the sentencing judge about his future intentions. While serving his sentence he increased his gang contacts and was well set up to join Clay Roueche when he got out.
- [239] W1 was also involved in an incident where he was middling a cocaine deal to Jon Kroitoru. It turned out not to be cocaine. He got the supplier to a restaurant with Clay Roueche and Amir Eghtesad and told him he would not be allowed to leave until they got their money back. He threatened the man, whom he could have slapped.
- [240] He said at one point he and Troy Tran were cooking cocaine into crack, and it wasn't reacting. Tran realized it was powdered milk. The Iraqis realized a person named Sammy had done it. He was beaten severely. W1 said he did not participate.
- [241] W1 testified he was sent to a rural address with Elliot Castaneda, a member of the UN gang whom W1 considered a close friend; Clay Roueche and Kroitoru were there. Some Korean guys were trying to subdue a guy. W1 went to help. The guy started to scream and the UN members ran. W1 was given a wallet from the scene and took the ID and held on to it. He kept a number of things from other incidents and kept them in a secret compartment in a house he then sold, without removing the items. He left that to a friend to be done. Instead the items were found by the police.
- [242] As part of his immunity agreement, W1 was supposed to tell the police about every illegal thing he had been involved with in any context. Just before the Vallee trial he told Crown of an incident he had not mentioned until then - he had caught his girlfriend doing cocaine in his apartment with a man whom he then threatened and hit with a gun, after putting it in the man's mouth. He said he had not previously told the police about it because it was a domestic dispute and his mind was on the gang when talking to the police. He said he had nothing to gain from hiding it from the police. He would receive immunity for anything he mentioned so it would be to his advantage to bring it up. He simply did not recall the incident at the time of his statements.

Foreign Conviction

- [243] W1 was cross-examined about a conviction against him in a foreign jurisdiction for assault. He gave an explanation of his actions that was not accepted by the trier of fact in that jurisdiction. He was found guilty, appealed unsuccessfully and in fact had his sentence increased, and has now served it.
- [244] His version of the events underlying this conviction had been led by the Crown before Madam Justice Dillon in the Vallee trial. She allowed the reasons from the foreign jurisdiction in for their truth and found that W1 had lied about the circumstances of that

offence. Before this Court, the Crown did not lead W1's version of events, asking him simply if he agreed with the conviction, which he said he did not. Under cross-examination, he testified to the exculpatory version of events at this trial. Defence applied to have the foreign reasons for judgment admitted for their truth again, submitting I should find, as did Madam Justice Dillon, that W1 lied at that trial.

- [245] The circumstances are different in this trial. Dillon J. was concerned that, the Crown having led W1's version, she might be asked to find W1 had been wrongly convicted in the foreign jurisdiction. She felt she was therefore compelled to look at the circumstances of that case and to make findings on it. I am not in that position. For my purposes, it is significant that W1 was found guilty of an offence in a foreign jurisdiction. W1 denies the underlying findings. There is nothing unusual about an offender maintaining his innocence in the face of a finding of guilt by a court. It is not necessary or appropriate for me to determine whether or not he was properly convicted in the foreign jurisdiction, or whether he lied about those events before that court or this one. It's a collateral matter in any event. It simply goes into the whole mix of the assessment of his credibility.

Photos

- [246] W1 identified Tran in some pictures taken in Mexico.
- [247] W1 testified that he and the "Calgary guys" did drug business together at some point, and he went to Calgary himself on business and for social occasions. He identified some pictures taken in Calgary.
- [248] W1 said he was initiated in a Buddhist ceremony. He said Tran and other FK members were there. He identified various people in a photograph taken at the Buddhist temple.

Immunity Agreements and Sentence Deals

W1

- [249] W1 said he approached the police to offer to cooperate in early 2009 because the gang had mutated into something he did not agree with. People were dying unnecessarily and it was bad for business. He got into it for money, not wars. He was moving to a foreign country. He said the murders of Whitey and Smurf was a further disillusionment. Clay Roueche was no longer around. The fast times and parties were gone. The Bacon conflict was eating away at everyone. The Bacons were being investigated and a number of the UN gang had been arrested. W1 did not want to go to jail. He wanted out so he would never go back. He thought the police would be interested in his information about drugs and it would all be taken down in a big operation.

- [250] W1 said he intended to be an informant, although he said he was not clear what that meant. There was a suggestion that he could be an agent, but that did not occur. In the end, he agreed to provide testimony. He did not initially ask for money and said he had no idea that was a possibility. He was given \$300,000 in exchange for waiving privilege and becoming a witness. W1 was also given immunity for things he did that he admitted to in the course of the investigation. Nothing else was covered.
- [251] W1 said he tried to tell the police the truth but he was very apprehensive. He used what he called "selective honesty" and left things out - people he liked or whom he felt had done nothing wrong. Troy Tran was one of these.
- [252] W1 showed the police pictures of UN hats and rings and photos. Troy Tran was in some of them. He provided his cell to them. He continued to communicate with the UN members while he was cooperating. He said the police were aware of it; if they wanted to use him as an agent he could not stop. He acknowledged he continued to lie and participate in illegal activities after he had started cooperating.
- [253] W1 promised to be "full and truthful" in his immunity agreement. He agreed in cross-examination that if he lied he could be prosecuted but maintained he has told the truth, including in the Vallee trial. He said he was not aware of the verdict or the decision in that case, which was released June 1, 2018, shortly before he began to testify at this trial.
- [254] W1 signed an immunity agreement in December of 2010. In June of 2011, his parents' house was attacked.

W2 and W3

- [255] W2 and W3 were arrested in January 2016. No explanation was offered as to why they were not arrested earlier with other UN gang members.
- [256] When W3 was arrested, he had guns and a large supply of Fentanyl in his basement. Neither he nor W2 thought the Crown case against them for any of the murders was strong; otherwise they would not have been left free for so many years. However, the guns and drugs could still result in W3 serving a lengthy prison sentence. This prompted both W2 and W3 to agree to make deals for immunity, and to testify as required. According to the agreement, failure to testify truthfully removes their immunity.
- [257] W3 thought he would be paid, as he heard W1 had been. He heard that others who testified in the Surrey Six trial got millions. He found out he would not be paid for testimony. He agreed to act as a police agent, and would be paid \$400,000 to attempt to obtain information about Conor D'Monte's whereabouts and against Kelly Hurst, who assisted in the Justice Institute bombings. His efforts to obtain information were unsuccessful. He has not yet received all of that money, but has agreed to split it with W2.

- [258] W2 and W3 pleaded guilty to participating in and assisting a criminal organization in August of 2016 and were sentenced to two years. W3 was released on parole the following June. He had some basic expenses paid: a total of \$2,340.28 for W3, most of which replaced his child's electronics that were seized in the search. He received canteen money in prison - \$300 a month.
- [259] W3 had kept up appearances with the UN until he was sentenced.
- [260] W3 said agreeing to testify gave W2 and W3 immunity from all other crimes, but it involved them giving up their lives here. If he is not truthful, the agreement is void and he could be charged.
- [261] W3 said he is at risk as a result of his decision to cooperate. His family's life is in danger. He would understand it if a UN person came after him, just as he attempted to have W1 killed when he heard he had flipped. W3 said he still holds W1 responsible.
- [262] W3 said he and W2 have not colluded or fabricated their evidence by consulting each other. They have abided by the condition that they not speak about their evidence with two exceptions: he told W2 he hoped the police did not go after their friend from Armstrong; he also told W2 he was going to make a timeline, but he did not share it. He said he never saw W2's statements, nor did he show him his.
- [263] W2 pleaded guilty to the same charge and received less than \$5,000, again for seized electronics and canteen. He will get half of W3's agency money.
- [264] W2 signed an agreed statement of facts in 2016 saying he had left the UN gang in 2009. He said that was what he recalled but when he went back and looked at events he had participated in it was obvious he was still with the gang until 2012.
- [265] W2 said the police played various intercepts to him. He was aware of some of the information through previous UN disclosure. They played W1's interview. He knew W1 had identified W2 as Cory Vallee in the McDonald's video at the Barber murder. However, he also figured out that JSP was cooperating because he had learned three years earlier that Michael Newman, a UN member in Surrey pre-trial, knew it was W2 and W3 on the McDonald video. He thought JSP must have identified him, but as time passed no one came to arrest him.
- [266] W2 said he left the interview feeling the police had nothing on him. He saw W3 in the booking room and attempted to talk to him. W3 told him to "get the fuck out of here". W2 learned Troy Tran and Bill Ly had been arrested at the same time as well. He learned W3 had been arrested for guns and drugs.
- [267] W3 was released within a day or two. W2 and W3 went for a "walk and talk" to discuss their situation. A "walk and talk" was a discussion held outside away from all electronics. They tried to figure out what had led to their arrest and who could have talked about them to the police.

[268] W3 explained that he was concerned about losing his house to civil forfeiture because of the guns and drugs. This also changed W2's attitude to cooperating: he said freedom and W3's house were the motivations, not money.

Surveillance

[269] Many calls, extensive surveillance, and numerous photographs were adduced by the Crown and admitted by defence. Very few have anything to do with Mr. Tran. Apparently this extensive body of evidence was put in to show the breadth of the conspiracy and the overwhelming fixation all members of the UN gang had with attempting to kill the Bacons and their associates. It is the Crown's theory that a huge cloud of agreement and intention hovered over and coloured the actions of everyone associated with the UN gang. Therefore it must also inform Tran's actions and intentions.

[270] Tran shows up in the following surveillance admissions:

Jan. 11 and 12, 2008 at Mark Kim's funeral;

Feb 28, 29, 2008 - with Roueche,

May 16, 2008 - Tran and Ly, Yong Sung Lee, Roueche at No. 5 Show Lounge

June 18, 2008 - Tran at Nervosa Café with Saed and Tilli-Choli and Aram Ali

Aug. 15, 2008 - with Ly, pulled over by police

Sept. 8, 2008 - Tran pulled over by police

January 14, 2009 - White Toyota Tundra LYS 648 seen

Nov. 19, 2009 - Ly and Tran pulled over in Caravan

Dec. 6, 2009 - Tran in Tundra LYS 648

Aug. 21, 2011 - Eghtesad arrested at YVR, with Tran at the time.

[271] An additional admission was filed that a van was stopped leaving the scene of the shooting of Clay Eheler, a Bacon associate. The van was registered to Clay Roueche. There was a pistol found in the van (not linked to the shooting) and an envelope addressed to "T. Tran".

[272] Surveillance and intercepts the night of the Kensington off-ramp shooting (May 9, 2008, late afternoon) shows Tilli-Choli, Saed, Roueche and Yong Sung Lee in one vehicle the that area both before and after that shooting.

Intercepts, Texts, Recordings

[273] Extensive volumes of transcripts of intercepts from hotel rooms, cars, and phones were admitted. None of them concern Mr. Tran, except for a few peripheral references.

- [274] Someone whom the Crown says is Tran was mentioned several times in conversations between Clay Roueche and Roy Kenshin Lee, who was in prison. These conversations took place in December of 2007 and January and February of 2008. As already mentioned, Mr. Lee asked about a man referred to as "the mole" or "the guy with the mole". Lee wanted to be assured that man was still with Clay Roueche, who responds that they are close.
- [275] Given the evidence that Mr. Tran's distinguishing facial characteristic is a large mole, and W3 and W2 said he was referred to as Mole, and the context of the conversations (that is Clay Roueche's assurances that he was tight with the guy with the mole), I accept that they were referring to Troy Tran.
- [276] Both Crown and defence went through a detailed analysis of over one hundred intercepts on the issue of the purpose each one could be used for: was the call simply circumstantial evidence to support some other aspect of the Crown's case, including support for the Vetovec witnesses, or was it an act in furtherance of the conspiracy.
- [277] Other than the calls already referred to between Roueche and Roy Kenshin Lee (in prison) in which reference is made to a man with a mole, the only direct reference to Tran in any of these calls or recordings is:
- a call to Roueche on May 7, 2008 from an insurance agent regarding car insurance for Tran
 - a mention of "the mole" in conversations between Roueche and his girlfriend after Roueche's arrest regarding instructions to W1 and JSP to take care of Roueche's business and property interests, as well as payment of child support;
 - a call on October 21, 2008 between Tilli-Choli and Amir Eghtesahd in which Tilli-Choli asked if "Legs" is one of our guys, and Eghtesahd says "Troy says he is our guy". Later that day, Eghtesahd called Tilli-Choli to say another gang members had contradicted Troy, and "Legs" is not one of their guys.
- [278] The calls refer to information about the Bacons, the conflict with the Bacons, the use of nicknames for the Bacons and for UN members, various vehicles, and killing of Duane Meyer, the use of Blackberries, various incidents testified to by one or more of the Vetovec witnesses (e.g. the GM Place incident, Michael Le, Leclair shooting). In view of the admissions as to the existence of the conspiracy and who was a member of it, the significance of the calls is lessened.
- [279] Much of the extensive evidence and volumes of admissions put before me were, it seems to me, simply duplicated from the Vallee trial without regard to a focus on Tran and I do not intend to go through these calls individually.

McDonald's Video

- [280] The Crown filed a detailed analysis of the McDonald's video taken on May 9, 2008, the night Jonathan Barber was shot in the 7400 block of Kingsway. It is admitted that Barber was a home and auto stereo installer.
- [281] The events took place around 9:30 p.m. on May 9, 2008. It is dark and the quality of the filming is not good.
- [282] It was admitted that Jonathan Barber girlfriend gave a statement containing the following information. She said Barber drove his Jeep Grand Cherokee to the McDonald's parking lot to meet a customer. The arrangement was that he would drive the customer's car to his shop and Jonathan Barber girlfriend would follow in the Jeep. A Porsche Cayenne pulled in and Barber spoke to the driver for about 10 minutes, standing by a fence on the east side of the parking lot. Jonathan Barber girlfriend stayed in her own vehicle. Barber then started the Cayenne and drove out of the parking lot. She followed, directly behind him. Jonathan Barber's girlfriend heard a bang and saw a vehicle drive by and shoot into the Cayenne. She realized she was injured. She stopped the Jeep and got out and screamed for help. The Cayenne kept moving.
- [283] The video shows a silver Jeep Grand Cherokee Laredo (Jonathan Barber and Jonathan Barber's girlfriend's vehicle) arriving at 21:36:26.
- [284] The video shows a dark-coloured Tahoe (Jesse Adkins' vehicle) stopping in a parking stall at 21:37:35, three men getting out of it and walking to McDonald's, going inside briefly, and arriving back at the Tahoe by 21:42:21, where they stand by the vehicle. A white Tundra (Troy Tran's vehicle) arrives and pulls in next to the Tahoe at 21:44:09.
- [285] A few seconds later, at 21:44:22, a Porsche (a Bacon vehicle) pulls into a parking stall, grill to grill with the Tahoe, and the Tundra moves forward to the driver's side of the Tahoe.
- [286] At 21:45:05, two of the males from the Tahoe stand by the Tundra driver's window for ten seconds; the Tundra then moves forward, the Tahoe starts up, and the Tundra backs into a parking spot, lets the Tahoe pass, sits there for 20 seconds, and at 21:46:29, follows the Tahoe, turning right down Hall Avenue, then turning right on Arcola, so that both the Tahoe and the Tundra are parked along the street behind the mall.
- [287] About nine minutes later, at 21:55:36, the Porsche pulls out of the McDonald's parking stall and moves towards the exit at 21:55:36. The Tahoe starts to move along Arcola, turning left on Hall, and reaches the exit of the McDonald's parking lot before the Porsche does. The Jeep Grand Cherokee also moves towards the exit onto Hall Avenue, 17 meters behind the Porsche, as the Porsche turns south on Hall Avenue. Twelve seconds later, at 21:56:28, the Porsche moves south on Hall towards the intersection with Kingsway, with the Tundra directly behind it. The Jeep Cherokee is not visible at this point.

- [288] According to the W2 and W3, Jesse Adkins, driving the Tahoe with W3 and Barzan Tilli-Choli in it, got in the right lane and turned right on Kingsway, which was confusing as the Porsche was turning left. Jesse quickly turned and followed it. The Tundra, driven by Troy Tran, with W2 as a passenger, missed the light and sat waiting for the next one, by which time Barzan Till-Choli had shot and injured Jonathan Barber's girlfriend, who was driving the Jeep Grand Cherokee, and had shot and killed Jonathan Barber himself, who was driving the Porsche.
- [289] It is not clear how Jonathan Barber's girlfriend, driving the Jeep, got from Hall Avenue onto Kingsway behind the Porsche, when the Tundra missed the light and was not able to turn onto Kingsway immediately, given that the video analysis states that the Tundra was directly behind the Porsche on Hall Avenue. However, the video does not show the Jeep after it moved towards the exit so it may have turned onto Hall ahead of the Tundra a second to two after the last picture.
- [290] Also, W2 said they were about five vehicles behind the Porsche as they were at the light. He said he did not understand why Jesse Adkins turned right, as it seemed a golden opportunity to shoot them. When the light was green, they turned onto Kingsway and could see the Tahoe ahead of them. They came to the light at Edmonds. He heard shots in the distance; as they moved ahead he saw a Jeep Cherokee parked in the left fast lane. He thought it was dark gray or blue. Tran stopped and sat there. W2 told him to move. He reversed into the car behind him, and then pulled out and around. They drove past the crashed Porsche Cayenne.

Crown Position

- [291] The Crown canvassed the law on conspiracy extensively in their lengthy written and oral submissions.
- [292] In order to prove the actus reus of conspiracy, the Crown must prove the formation of an agreement, tacit or express, between two or more individuals, to act together in pursuit of a mutual criminal objective: *R. v. H.A.*, [2005] O.J. No. 3777, 206 C.C.C. (3d) 233 (Ont. C.A.).
- [293] The mens rea is the "genuine intention to agree to commit the indictable offence."
- [294] Courts have commented on how difficult it is to "marshall the evidence of criminal conspiracy without the ability to use co-conspirator's statements of what was said in furtherance of the conspiracy against each other."
- [295] If the Crown establishes on evidence directly admissible against Tran that he was probably a member of the conspiracy, the Crown may "use double hearsay evidence of co-conspirators as to what they variously said in furtherance of the conspiracy": *R. v. Mapara*, 2005 SCC 23.

- [296] Although the conspiracy in this case is admitted, the Crown says its extensive breadth and characteristics must be understood in order to see how wide and how all-encompassing it was. The Bacons threatened the UN gang's core existence. Therefore if you were a member of the gang, you were a member of the conspiracy. The minimum effort required of UN members in furtherance of the conspiracy was to help identify and report the locations of the Bacons, and provide information about the vehicles they were using.
- [297] In *R. v. J.F.*, 2013 SCC 12, Moldaver J. stated:
- [52] In my view, where a person, with knowledge of a conspiracy (which by definition includes knowledge of the unlawful object to be obtained), does (or omits to do) something for the purpose of furthering the unlawful object, with the knowledge and consent of one or more of the existing conspirators, this proves powerful circumstantial evidence from which membership in the conspiracy can be inferred. To be precise, it would be evidence of an agreement, whether tacit or express, that the unlawful object should be achieved. Ultimately, that issue is for the trier of fact, who must decide whether any inference other than agreement, can reasonable be drawn on the evidence.
- [298] In that case, two youths had conspired to kill their mother. The accused became aware of the agreement and provided advice on how to drown the mother. He also provided an alibi. The Supreme Court of Canada concluded that the accused was a member of the conspiracy, despite not having been part of the original agreement, because the accused had knowledge of the conspiracy and the unlawful object sought to be attained, and did something for the purpose of furthering that unlawful object with the knowledge and consent of one of the existing members.
- [299] The Crown says Tran's expectations or wish to be involved or not be involved in the Barber murder is irrelevant: he went out and met the W2 and W3 to assist in the objective of the conspiracy - to kill the Bacons.
- [300] In the Crown's opening, emphasis was placed on W2's evidence that Tran identified the Porsche people as Bacons, and suggested killing them then and there. The Crown says this is direct evidence of Tran hunting the Bacons and wanting them dead.
- [301] In closing argument, the Crown referred to this evidence and suggested it was supported by evidence from W1 that he had distributed photos of the Bacon brothers and Dennis Karbovanec to Tran in the period of time between Mark Kim's death and Duane Meyer's murder. The Crown submits, therefore, that Tran would know what the Bacon brothers looked like and likely did recognize one of them that night. As well, it is clear from texts between Barber and Jonathan Bacon and from the licence number of the Porsche Cayenne that there was a Bacon brother in the parking lot that night.

- [302] The Crown says even if W2's evidence about Tran's identification of the men in the Porsche as Bacons and his remark about "doing it right then" is not accepted, there is sufficient circumstantial evidence to from which Tran's intent to be part of the conspiracy can be inferred. They refer to R. v. Villaroman, 2016 SCC 33, as relied on by Dillon J. in Vallee:
- [35] The issue with respect to circumstantial evidence is the range of reasonable, not just possible, inferences that can be drawn from it.
- [303] Other plausible theories or other reasonable possibilities must be based on logic and experience applied to the evidence or absence of evidence, not on speculation or conjecture.
- [304] The Crown says the only reasonable inference that can be drawn from the evidence is that Tran had knowledge of the objective of the agreement and had the intention that it be carried out. W1 said Tran participated in an initiation ceremony and took an oath of Honor, Loyalty, and Respect to the UN gang. W3 said Tran was a highly respected member of the UN.
- [305] The Crown says Tran attended meetings where the conspiracy was discussed and planned; he was in attendance at the Barber murder. This is consistent with an intent to carry out the conspiracy, not with simply pretending to go along with it, or passively acquiescing to it. The Crown says that to suggest Tran was faking his participation in scouting missions or was attempting to please the group by appearing to be part of the conspiracy is unsupported by any evidence.
- [306] The Crown relies on W1's evidence that Tran and Kim acted as Roueche's bodyguards show they must have been aware of the conflict. They say this is supported by the police surveillance putting them all together in 2006. They scouted out locations together, and in fact, Jonathan Bacon was shot at one of those locations. A close associate of Jarrod Bacon was found shot at another location. As well, they went through the Buddhist initiation ceremony and received UN rings.
- [307] W1 said after Tran and Kim stopped acting as bodyguards, Tran moved from Abbotsford to Burnaby, and then Vancouver. He said he and Tran would discuss the conflict, the lists of Bacon vehicles. He said he did not ever recall Tran not being along on Roueche's hunting trips.
- [308] W1 said Tran was along on the Eagle Road scouting and planned shooting, and he was present at the meeting where Conor D'Monte was announced as leader, and he was there at the "legs out" meeting.
- [309] The Crown says no one would fake such participation or interest to the point of being present at scouting missions, including the one on May 9, 2008; it was too dangerous, both factually and legally, given the number of shootings and murders associated with the Bacon conflict and conspiracy.

- [310] The Crown says Tran showed up at McDonald's in response to a call going out for people to get the Bacons. It was not chance; he was there to meet up with W2 and W3. He followed Jesse Adkins' vehicle when it left the parking lot. The Crown says the only rational inference is that Tran had knowledge of the object of the conspiracy and an intention that it be carried out. He would not put himself in this position for appearances sake.
- [311] The Crown goes further and suggests that the mere fact that he met up with W2, W3, and Jesse Adkins at the McDonald's shows that he was acting in furtherance of the conspiracy. He was showing up as a scout or intelligence gatherer.
- [312] The Crown says that even if Tran was largely passively acquiescent in the conspiracy, passive acquiescence is not an excuse. The Crown provided an analysis of *R. v. McNamara* (No. 1) (1981), 56 C.C.C. (2d) 193 (Ont. C.A.), to show that passive acquiescence in a conspiracy is a very limited concept. The Crown draws a distinction between passive acquiescence in the context of the actus reus of conspiracy, that is, merely having knowledge of the plan, and forming the mens rea, or the intention to join in the conspiracy.
- [313] However, the Crown appears to concede that passive acquiescence alone may well not add up to membership in a conspiracy because they acknowledge something more is required to make Tran part of the conspiracy. The Crown says that in addition to passive acquiescence to the plan to kill the Bacons, Tran did something to further the conspiracy with the knowledge and consent of the other co-conspirators.
- [314] The Crown says it is not necessary that Troy Tran actually have a role in the Barber shooting. W2 and W3 wanted the Bacons dead but both testified they did not want to be part of an actual shooting. In fact, the UN gang had put together a shooting team. The other members of the conspiracy would contribute in other ways, like intelligence gathering of license plates and locations, providing weapons, and scouting for the Bacons and Bacon locations so the hit team could do its work.
- [315] The Crown says that is probably why Tran showed up at the McDonald's parking lot that night, and was thus furthering the conspiracy. He may have been upset and shocked at what Tilli-Choli did, but his expected or anticipated participation as a scout or intelligence gatherer that night makes it more likely that he would have shown up with a genuine intention to assist the conspiracy in his capacity as a non-shooter.
- [316] The Crown says it is common sense that one of the purposes of drug gang is protection of its members from competition. All of them would respond to the murder of one of their own.
- [317] The Crown says this is supported by the statement Clay Roueche made to a police officer when he was stopped at around 8:20 p.m. on May 9, 2008. He told the officer the killings would continue because the situation was the same as if a police officer was killed, implying the need for collective revenge.

- [318] The Crown says Tran was associated with other admitted UN and conspiracy members; aside from the evidence of the Vetrovecs witnesses, there are photographs, surveillance, and documents to establish that.
- [319] As well, when all the evidence is taken in context, what binds the UN together is involvement in the drug trade. The Bacons were a threat to that common criminal enterprise. Tran was a drug dealer. Therefore he was affected by the conflict with the Bacons. Members of the UN gang were expected to participate in the conspiracy. Discussion of it was widespread, as was sharing of information about the Bacons. There is no basis upon which to conclude that the conspirators were a separate group within the UN gang; Tran was part of the gang and he was part of the conspiracy.
- [320] The Crown says the murder of Duane Meyer threatened Tran's livelihood and his safety. Thus he had a motive to participate in the conspiracy. His base in Calgary is irrelevant; his membership in the UN gang trumps that.
- [321] W3 testified that he believed Tran was along on a scouting mission one or two months before the Duane Meyer murder to look at Mike Le's residence. The Crown put in evidence of GPS tracking which showed Roueche's vehicle tracked to that location on other dates, although there is no suggestion Tran was with Roueche at that time.
- [322] The Crown says it is likely Tran did participate in scouting Mike Le's locations, given his membership in the gang and his friendship with Roueche.
- [323] The Crown says it is likely Tran was sent to meet W3 on the night of the Barber murder. He knew who he was looking for in the parking lot and pulled up to the Tahoe. Thus the Court can conclude that Tran was sent by Roueche to meet up with the others in their efforts to find the Bacons that night. W3 testified that, once on Arcola Street, Tran told W3 that Tilli-Choli was on his way.

What Evidence is there that is Directly Admissible Against Tran to Show he is Probably a Member of the Conspiracy

- [324] The Crown relies on Tran's association with other admitted UN and conspiracy members at the material time. They say this can be established even without the Vetrovec witnesses. They refer to various photographs, surveillance of Tran with Roueche (many times) and JSP, Doug Vanalstine, W1, Amir Eghtesad, attendance at various restaurants when other UN gang members were there; his travels to Calgary and Banff with various UN members including Roueche, JSP, Tilli-Choli, Saed, Duane Meyer, Elliot Castaneda, Manh Nguyen, Kath Chathapathet, Aram Ali, Yong Sung Lee; the presence of the white Tundra at the McDonald's the night Barber was killed; his association at a police check with Eghtesad, and Bill Ly; his arrival at YVR with Eghtesad.
- [325] Items seized on his arrest on January 22, 2016 included photos with UN gang members, the use of the name T-Rex on his playstation.

- [326] W3 said Tran went along on a trip to Winnipeg, bringing money from Versace to assist in the unsuccessful hunt for W1, who was cooperating with the police. Obviously W1 is not a Bacon associate, but the Crown says this is related to the conspiracy because W1 was a target for agreeing to cooperate with the police.
- [327] The Crown says all this evidence should be viewed in the context of other evidence - the intercepts, the murder of Duane Meyer, the Eagle Road events, the shooting at Hall and Collier and the Kensington off-ramp; the statement of Roueche to Sgt. Colton on the night of the Barber shooting, the evidence of contact lists from Blackberries seized from Roueche and Kroitoru, the shooting of Jonathan Barber, the GM Place events of January 24, 2009, and the murder of Kevin Leclair.
- [328] The Crown says that, taken as a whole, the only inference to be drawn from all of the evidence is that it has proven beyond a reasonable doubt that Tran was a member of the conspiracy to kill the Bacon brothers and their associates in the time period between January 1, 2008 and February 8, 2009.

Defence Position

- [329] The defence emphasizes that it is not enough to have knowledge of a plan of criminal conduct, to discuss it, or to passively acquiesce in it. The defence refers to *R. v. Grewall*, *Grewall & Toor*, 2001 BCSC 48; and *R. v. McNamara et al* (1981), 56 C.C.C. (2d) 193 at pp. 452-3 (Ont. C.A.) where the court stated:

Mere knowledge of, discussion of or passive acquiescence in a plan of criminal conduct is not, of itself, sufficient

- [330] A conspiracy requires an actual intention in the parties, when agreeing, to participate in the act proposed, in this case, the murder of the Bacons and their associates. Mere words purporting agreement without an assenting mind to the act proposed is not sufficient: *United States of America v. Dynar*, [1997] 2 S.C.R. 462. The defence also says the Crown has not negated the reasonable possibility that Tran pretended to go along with the conspiracy.
- [331] Since the Crown's case is circumstantial, the court must consider if there are reasonable inferences other than guilt.
- [332] The defence says the Crown has not proven that acts alleged to have been committed by Tran rise to the level of a common agreement with others to conspire, nor has the Crown proven that Tran genuinely intended that the object of the agreement be realized.
- [333] The defence says W1's evidence that Tran was initiated into the UN gang at a Buddhist ceremony was vague and is not supported by other evidence. The photograph he relied on could not be identified by W3.

- [334] The defence says the evidence of Tran getting a ring should be accorded no weight. The evidence of W3 was vague and changed from his statement. W2's evidence as well changed from his statement to his evidence at trial. W1's evidence as to membership and ring significance was vague and confusing, thus making his precision with respect to Tran's ring suspect. There was no UN ring found in Tran's house when he was arrested.
- [335] The defence says the Blackberry contacts are of no significance. The name TRex was associated to another member and neither W2 or W3 could be sure whose addresses were on the contact lists they were shown. W2 only associated "T" with Tran because Tran's name starts with a T.
- [336] The defence says the evidence from the Vetrovec witnesses of Tran's attendance at various significant dinners was uncertain. Even if the court finds, on the evidence of W3 and W1 that Tran was recognized as head of the Calgary group at one of the dinners, there is no evidence that the Calgary FK group contributed to the furtherance of the conspiracy. W2 had no specific recollection of Tran's attendance at any particular meeting.
- [337] The defence says W3 testified that once Conor D'Monte became head of the UN, the members were pushed harder to kill the Bacons, but there is little or no evidence of W1's or Tran's participation after that point.
- [338] The defence says the photographs show merely that Tran was associated with UN members but not that he was a member of the UN. Although Tran was seen in Roueche's company in 2006, he is seen very infrequently between February 2007 (the Gorg-o-Mish shooting) and Feb, 2008.
- [339] Overall, the defence says Tran was a respected and close associate of the UN gang, like Khamla Wong, but he was not a member.
- [340] The defence says, alternatively, that even if Tran was a member, the evidence does not raise his actions beyond mere presence or acquiescence.
- [341] The defence says if the Court finds Tran is a probable member in the conspiracy at stage 2, and considers hearsay to give context to the direct evidence, it is this same evidence that is relevant at stage 3. This is because the Crown's theory is that the UN was united by one goal: drug trafficking. The Bacons threatened that, so each and every member of the UN had to a motive to join and actually participate in the conspiracy.
- [342] However, the defence says the UN was not an organization. It was, in the words of W3, "disorganized crime". It was a loose affiliation of drug dealers; people either didn't follow the rules or made a show of following the rules but went their own way. Not everyone, according to W3, was involved in the Bacon conflict. There were at least thirty members in 2006-2008, and one hundred and fifty associates. Yet the evidence provided by the Crown concerns about twenty people.

Evidence Linking Tran to Scouting/Hunting Expeditions

- [343] The defence points out that, despite W2 and W3's longstanding membership in the UN, they do not confirm W1's evidence regarding Tran's early role in the conspiracy. W3 said Tran was more in Calgary than Vancouver until 2011.
- [344] The defence challenges W1's evidence that Tran and Mark Kim were Clay Roueche's bodyguards. Although W1 claimed to spend a lot of time with Tran in 2006, just generally, and also to show Tran and Mark Kim various Bacon locations at Roueche's direction, there were no surveillance observations of this although surveillance was ongoing throughout this period. W1 said Tran's role as bodyguard ended before Kim returned to Calgary and was killed on December 31, 2007.
- [345] W1 said Tran began to spend more time with Versace after that.
- [346] W3 testified that he was close to Roueche and spent a lot of time with him, socializing with him regularly after 2005 but W3 never stated that he saw Tran acting as a bodyguard. W3 thought Tran's occupation was selling drugs in Calgary. W3 thought Miyo (Yong Lee) was Roueche's bodyguard and W2 thought Miyo and Duane Meyer were Roueche's bodyguard.
- [347] W1 said Roueche organized large hunting trips for the Bacons between Mark Kim's death at the end of 2007 and Duane Meyer's murder on May 8, 2008. He recalled one was to look at where a guy named "Mo" lived, who was the manager of a Bacon dial-a-dope line, and another was to look for Karbovanec and Jared Bacon. W1 listed many members of the UN gang, including Tran, whom he said attended at least one of these hunts. He said he could not recall Tran ever not being present, but also said he could not be sure he was on any particular hunt. In one of his statements, when describing the hunt for "Mo's" residence, he did not mention Tran as being amongst the participants. The defence questions why "Mo" would be of interest at this time, given that the "legs out" meeting at which it was decided to target low level Bacon associates did not occur until after Roueche's arrest.
- [348] W1 said he himself would make excuses to avoid going on these expeditions. Neither W2 nor W3 mentioned any of these events.
- [349] W1 said Tran was involved in the plan to scout out Karbovanec's Eagle Road residence and shoot it up. The defence says such a role is contrary to W2 and W3's evidence of Tran's role in the conspiracy. They both said he made no major moves and had no specific role in the hunt for the Bacons. Defence says W1's evidence is not bolstered by being able to point out the location; it is easy to insert one more person into such an incident.
- [350] W1 said he would talk to Tran about Bacon licence plates or lists associated to the Bacons. Neither W2 nor W3 gave similar evidence or said they ever received such information from Tran.

- [351] W3 said he thought Tran was part of a group that scouted out a location associated to Mike Le. He had not mentioned this at the Vallee trial. His recollection of the entire event was hazy.
- [352] The defence says W3 offers little for the Crown in respect of Tran. Other than a general conversation he had with Tran at some point about hating the bacons and can't wait until they get it, he had no discussions with Tran relating to the conspiracy. He said Tran was at some of the meetings but did not mention any participation in any way by Tran, either at the meetings or elsewhere, other than his possible presence at the Mike Le scouting event. W3 said Tran was not involved in the hit crews, nor did he ever share information about the Bacons. W3 did not remember W1 participating in hunting or reconnaissance missions for the Bacons or their associates. He did not recall Tran mentioning W1 very often, nor did he get any indication that Tran had spent time with W1 in the past.
- [353] W2 agreed that he never heard of Tran forming a crew with Bill Ly, nor had he ever heard of Tran being assigned any specific role in the conspiracy or of making any moves at all - such as hunting or gathering information. He did say Tran attended the UN gang shows of force as organized by Roueche, but the defence says this is consistent with socializing at appearance and gatherings.

Barber Evidence

- [354] The defence says the Crown tries to explain differences between W3's statements and his evidence at the Vallee trial with his evidence at this trial shows that he is being more precise, having had more time to think. On the other hand, and inconsistently, the Crown says inconsistencies with external evidence are explained by the passage of time.
- [355] The defence says W3's evidence about the mass email from Clay Roueche advising the gang of Duane Meyer's death was very vague. Such an email was not found on Roueche's email when it was seized on his arrest shortly thereafter. W2 said he learned of Duane Meyer's death through Conor D'Monte.
- [356] The defence says the evidence of the plans on the night of the Barber murder was unclear. W3 said he took guns that night as a donation towards the hunt for the Bacons, and his expectation was that they would be used towards killing the Bacons. He was not planning on using them himself. He asked Roueche where they should go and he was told to go to the office in Burnaby and someone would meet them there. W3 was not sure he mentioned Tran. W2 said W3 told him Tran was meeting them at the office to drop off the guns.

- [357] As well, W3 and W2's evidence as to what occurred when they got to the office area is unclear. W3 was not clear whether Roueche told him who would be coming to meet them, or whether that person was already on their way there, and why that person would come to McDonald's, given that they were only going there briefly. W3 could not say why Tran showed up at McDonald's. W2 said either W3 or Jesse Adkins told him Barzan Tilli-Choli was on his way, not Tran.
- [358] W3 and W2's evidence contradicted each other in various ways, and was also contradicted by the video. For instance, W2 said he alone talked to Tran when he pulled into the parking lot. W3 also said he did not recall speaking to Tran but the video shows a second person walking over to the vehicle. W3 thinks it was his decision to get out of the parking lot; the situation was alarming and confusing and there was no plan. W2 said it was Tran's. W3 said he noticed the Porsche and recognized it as a Bacon vehicle when he came out of the washroom. He wasn't sure what to do so he got back into Jesse Adkins' vehicle and waited for W2 and Adkins to come out of McDonald's; Tran pulled up. No one recognized the people in the Porsche and Tran told him he did not know if it was a Bacon vehicle.
- [359] W2 said the Porsche was nose to nose with them when they parked and he saw three males outside the vehicle. All three went into the bathroom, and on their way out, Tran pulled up. Tran recognized the men as Bacons and asked if they should "do it right here". W2 noticed the cameras and Tran suggested pulling out to the street. Tran then reversed out of the parking lot.
- [360] In fact, the video shows Tran pulling in 13 seconds before the Porsche arrived, and then following the Tahoe out of the parking lot. According to Jonathan Barber's girlfriend, the woman who was driving the Cherokee, only one male got out of the Porsche and she did not get out of the car herself.
- [361] The defence says W2's evidence that Tran identified the three men he says he saw as Bacons cannot be accepted.
- [362] The rest of the evidence of W2 and W3 contains similar discrepancies, but only W2 was with Tran as they headed out to Kingsway. He said Tran was quiet, stunned, and had to be prompted several times to move, once they realized Tilli-Choli had shot the Cherokee and the Porsche.
- [363] The evidence of W3 and W2 directly conflict again on whether Tran drove the occupants of the Tahoe downtown after they abandoned that vehicle, as W3 says, or whether someone else picked them up and drove them to Kreshnik Ismailaj's, as W2 says. Defence says this just goes to show how unreliable both witnesses are. As well, W2 says W1 arrived to pick up Tilli-Choli, which cannot be true as he was proven to be at the airport entering Canada at the time.

After the Barber Murder/before Leclair

- [364] The defence notes that the evidence of both W3 and W1 changed as to whether Tran was at the "legs out" meeting.
- [365] Both W3 and W1 referred to meetings at a spa in Richmond between Duane Meyer's murder (May 2008) and Kevin Leclair's murder (Feb 2009). W3 said they would discuss business, including the Bacons. People in attendance included Tran. W1 said it was a place to go and relax. He did not say they held meetings there.
- [366] W3 said he went out scouting regularly for Bacons in this period. He said he was in Blackberry contact with Tran but not frequently. They would discuss drug business or organizing a dinner. He was not aware of any scouting that Tran did at this time.

Defence Conclusion

- [367] The defence says the Crown's case is based on witnesses who are simply unreliable, both through their Vetovec characteristics and through the effect of the lapse of time on their memories. These witnesses have spent the majority of their lives lying to everyone and should not be believed now. They benefitted from their cooperation financially and through escaping punishment for their offences.

Vetovec Analysis

- [368] The Vetovec principles outlined by Madam Justice Dillon, which I have set out above, deal with two main reasons for caution in respect of such witnesses: (1) credibility, that is an examination of various potential motives to lie (benefits received or to be received, collusion, access to disclosure, accomplice knowledge, minimizing one's own involvement), and (2) reliability, that is, the usual attacks on a witness' ability to recall and to accurately recount their evidence (passage of time, failing memories, selectivity, leading questions, inconsistent statements, internal inconsistencies, external inconsistencies).
- [369] In my view, the main concern with these witnesses, despite their obvious Vetovec characteristics, is reliability rather than credibility. The three of them were testifying about events that took place many years ago. Their memories are obviously frail, and yet all three testified with assurance. Their stories are clear in their own minds and their testimony by this time has an air of being scripted; there was nothing spontaneous about it. When pressed, the witnesses were vague on times and the specifics of events, particularly whether Troy Tran was present, and were often shown to have given prior inconsistent statements.

- [370] None of the Vetrovec witnesses had an obvious reason to deliberately lie to inculcate Tran. Tran was, for W2 and W3, a respected member of the gang but a social acquaintance only for most of the time period covered by the indictment. But for his appearance on the night of the Barber murder W2 and W3 saw him mainly at dinners, and to discuss drug business. They knew little about his presence in the Valley group, or that he actually lived in the Valley while acting as a bodyguard for Clay Roueche, according to W1.
- [371] While receipt of disclosure can be a relevant factor in assessing a Vetrovec witness, and while these witnesses did receive some disclosure, the information they learned had little if anything to do with Tran. There is also room to argue about some collusion between W2 and W3, but nothing that impacts Tran, other than the confusion over who was shot in the "friendly fire" incident. Since, in my view, there is no doubt that Tran was in the white Tundra at the McDonald's, that issue is not particularly significant in terms of the potential for collusion on anything material.
- [372] As well, although all three Vetrovec witnesses are accomplices in the conspiracy, the nature of this charge and the Crown's theory of Tran's involvement dilutes the potential for deliberately concocted testimony to falsely involve Tran. There are few specifics about Tran in the many weeks of evidence, except for his role in the events the night Jonathan Barber was murdered. Even there, the evidence of Tran's involvement is peripheral, with the exception of W2's evidence that Tran identified the men they were watching as Bacons and suggested shooting them then. I will deal with that piece of evidence separately.
- [373] W2 and W3 struck me as men without consciences, cold, cruel, vindictive, opportunistic, and amoral. Their demeanour in the witness box matches most of the descriptions commonly used for credible witnesses: calm, rational, logical, unshaken in cross-examination, willing to admit where they are uncertain. But they have been through their evidence many times in statements, and they testified and were cross-examined extensively in the Vallee trial.
- [374] W3 gave one word answers where possible, and would explain if asked to. W2 was much more talkative and gave long answers as he recounted numerous tales of violence which had precipitated and participated in.
- [375] W2 and W3 testified without hesitation about details and events that occurred ten or more years ago. Their evidence was filled with hearsay, rumours, and gang gossip. They were completely straightforward and certain about their evidence, even when it was contradicted by video. W2 in particular was very sure of his evidence, even where it directly conflicted with video evidence. He said he preferred his memory.
- [376] While acknowledging that their memory did not accord with earlier statements or with the clear evidence of the video, both W2 and W3 typically preferred their memory and responded to the inconsistencies: "That's what my memory tells me now."

- [377] Even when their testimony was directly contrary to each other (e.g., W2 said Troy Tran left when they were cleaning out Jesse Adkins car after the Barber murder, and they were driven downtown by someone else; W3 said Troy Tran stayed with them and drove them downtown), each was sure of his respective version.
- [378] W3's evidence respecting Troy Tran was fairly vague. He was testifying about events ten or more years ago, and which he has recounted in various statements to the police, to Crown, and in testimony before the court in the trial of Cory Vallee. He was not a close friend of Troy Tran's until quite late in the UN history; W2 was never close to Tran. It became clear during his evidence that W2 could not distinguish between the members of the Calgary group, particularly Troy Tran and Bill Ly, at the time of the Meyer murder.
- [379] W1 displayed a subtle sense of what it meant to tell the truth to the point of evasiveness. For example, he told the police in one of his statements that he would sell weapons "once in a blue moon". Although he acknowledged in the Vallee trial that that was not accurate, in cross-examination at this trial he would not agree that he had lied to the police. He said the question had been put to him differently in the Vallee trial; therefore he would not call it an outright lie. He said it's a fine line, a gray zone; minimizing, yes, but not an outright lie.
- [380] In cross-examination, W1 was accused of trying to pin things on Tran based on the changes in his testimony from various statements. For instance, he had not initially listed Tran as being at the "legs out" meeting, but at trial he claimed Tran was there. W1 acknowledged he was supposed to be forthcoming in his statements, but said he had not mentioned all incidents and all people, and also said he minimized his own involvement.
- [381] As well, W1 identified Tran and Cory Vallee as two of the men going to the washroom at the McDonald's on the night of the Barber murder, and, while admitting he cannot be certain of his identification, maintained this identification at this trial, not knowing W2 and W3 have identified themselves on the video, and Tran's Tundra had not yet arrived in the parking lot.
- [382] W1 is obviously intelligent; he seemed collected, cool, and sure of himself, despite breaking down in the witness box, apparently upon seeing that Tran had been beaten up overnight in the cells. His past shows him to be an accomplished liar when it serves his own interests.
- [383] While Vetrovec witnesses can corroborate each other, in the circumstances of this case little of their evidence overlaps, except for some of W2 and W3's evidence at the scene of the Barber murder, where they contradict each other on important aspects involving Tran.
- [384] Assessing the evidence of the Vetrovec witnesses in light of the principles set out in the cases as listed by Madam Justice Dillon, I conclude that I must take great care in considering each aspect of their evidence that relates directly to Tran. This is not so much because these witnesses have a motive to lie to implicate Tran, because I cannot see that such a motivation exists, except insofar as they want to give usable evidence to preserve their immunity agreements. It is because they are testifying about events that took place

many years ago, most of which, aside from the Barber murder, they had no particular cause to remember. On many points their memories are frail to the point of uselessness.

- [385] In addition, none of the three demonstrated an innate sense of what it means to be truthful. They may not be deliberately lying in the witness box but, in my view, that is partly because they simply don't know or particularly care what the truth is anymore. They are motivated by self-interest.
- [386] For these reasons, it is important to look for corroboration for evidence which specifically relates to whether or not Troy Tran is a member of the conspiracy.

Discussion

- [387] The following phrases emerge from cases cited by Madam Justice Dillon in the passage set out above from her decision in *R. v. Vallee*, 2018 BCSC 892, and from the Vallee decision itself:
- [321] The essence of conspiracy is an agreement to pursue a criminal offence. The actus reus of the offence is the completion of the agreement and the mens rea is the genuine intention to agree to commit the indictable offence.

A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act.

There must be an intention to agree, the completion of an agreement, and a common design.

The important inquiry is not as to the acts done in pursuance of the agreement, but whether was, in fact, a common agreement to which the acts are referable and to which all of the alleged offenders were privy.

The Crown is simply required to prove a meeting of the minds with regard to a common design to do something unlawful, specifically the commission of an indictable offence.

A person cannot be a conspirator if he or she merely pretends to agree.

Mere words purporting agreement without an assenting mind to the act proposed are not sufficient.

- [323] Neither knowledge of the existence of a scheme to commit an offence nor participation in a criminal scheme alone establishes the act of conspiracy because the gist of the offence is a meeting of the minds to achieve a criminal objective.
- [324] Knowledge and acts done in furtherance of a criminal scheme are circumstantial evidence from which it may be inferred that the accused agreed to commit the indictable offence, particularly if they co-exist.

- [388] The existence of a conspiracy is admitted in this case. The issue here is whether Mr. Tran was a member of it. That is, did he form a genuine intention, with others, to agree to commit the indictable offence of murder of the Bacon brothers and their associates, between January 1, 2008 and February 8, 2009.
- [389] It is not necessary to have actual murders or criminal acts committed for a conspiracy to murder to exist, but in fact two Bacon-related murders did occur in the timeframe of the indictment: the murders of Jonathan Barber and Kevin Leclair.
- [390] Many people are admitted to have been members of the conspiracy and many of those have either pleaded guilty or been tried and found guilty. Others have fled the country or have been killed.
- [391] The existence of the conspiracy and the membership in it of Clay Roueche, Barzan Tilli-Choli, Karwan Saed, Ion Kroitoru, Dilun Heng, Yong Sung Lee, Amir Eghtesahd, JSP, Craig Cameron, W1, W2 and W3 is admitted.
- [392] The Crown alleges that certain other persons were members of the conspiracy. No admissions were made respecting these people, and at the time the admissions were signed, Madam Justice Dillon had yet to release her decision which directly concerned these people.
- [393] I do not intend to go into detail about the evidence in respect of each of these participants because so little of it touches on Troy Tran.
- [394] The Crown set out the evidence they rely upon to establish the membership in the conspiracy of the additional names. Much of it goes only to establish membership in the UN gang. However, based on the evidence I have heard, including the intercepts, and the admissions and evidence regarding the Leclair murder, which clearly implicates Kreshnik Ismailaj, Adkins, and Vallee in the conspiracy, and the role described for D'Monte, I have no hesitation in concluding that Conor D'Monte, Kreshnik Ismailaj, Jesse Adkins, and Cory Vallee were probably members of the conspiracy at the relevant time.
- [395] I cannot say the same is as clear for Bill Ly, and at the time of this trial Bill Ly was still to be tried. As the evidence I heard about him is so peripheral and of no assistance to either side, I will make no finding concerning him.
- [396] The evidence in respect of Duane Meyer is also not as clear. The Crown refers to evidence which tends to show his membership in the gang, and refers to their theory that the entire gang was expected to join in the Bacon hunt. W2 knew Duane Meyer well because they were both involved in Clay Roueche's helicopter drug transport business. W1 placed him as the potential shooter at the Eagle Road event, even though W1 said he did not know Meyer well and described him as a busy single father who was not around much. There is corroboration for an event occurring at the Eagle Road residence, but not as to who was there. As well, the event that is said to have galvanized the gang into joining the conspiracy was Duane Meyer's own murder. However, given that Duane Meyer was closely involved in

Clay Roueche's drug business in the Valley, which is where the Bacon war was focussed in 2006 and 2007, I accept that it is probable that he was a member of the conspiracy in the first few months of 2008 before his death.

- [397] Much of the evidence concerning Manh Nguyen (Versace) and the Bacon war is also somewhat vague, but I conclude that he was probably a member of the conspiracy on the basis of his central role in the gang.
- [398] The second stage of Carter, once the existence of a conspiracy is established, requires a consideration of whether, on evidence directly admissible against him, Tran was probably a member.
- [399] At the third stage of Carter, the actions and declarations in furtherance of the conspiracy of all those who are found to be probable members of the conspiracy are admissible against all other probable members in order to establish their membership beyond a reasonable doubt. In respect of Mr. Tran, if he is found to be a probable member of the conspiracy, the actions and declarations in furtherance of the conspiracy of all of the above admitted members and probable members are admissible against him in order to consider if his guilt is established beyond a reasonable doubt.
- [400] I agree with the defence submission that, in the circumstances of this case, the evidence of probable membership in respect of Troy Tran is not much different, if at all, from the evidence that would be used in the ultimate determination, because all of the hearsay evidence that is admissible against the other co-conspirators really only goes to show that there was a conspiracy, and that they were members, which is admitted in respect of most of them, and that many members of the UN gang were committed to war with the Bacons. In my view, their acts and declarations in furtherance of the conspiracy do not add to the evidence against Troy Tran that has already been considered at the second stage and thus do not assist in determining membership beyond a reasonable doubt.
- [401] I will, of course, consider the Crown's argument that to be a member of the UN gang carried with it a commitment to murder the Bacons.
- [402] Thus, in the circumstances of this case, the analysis of the evidence for the second and third steps of Carter are, for practical purposes, conflated, and the question becomes: has the Crown proven beyond a reasonable doubt that Troy Tran was a member of a conspiracy to murder the Bacons and their associates between January 1, 2008 and February 9, 2006. The *actus reus* is the formation of the agreement; the *mens rea* is the genuine intention to agree to commit the indictable offence of murder.
- [403] Despite the weeks of trial, not much of the evidence, aside from the Barber murder, touched specifically on Troy Tran, who is a peripheral and shadowy figure. It appears that he continued to socialize at dinners with the gang after the Barber murder, but he is not part of the Leclair murder or the various other scenarios testified to by W2 and W3 that occurred after that within period of the indictment.

[404] For whatever reason, there appears to have been no focus on Tran for many years. W1 and possibly JSP had begun to provide evidence for the police as early as 2009. Although W1 had, early on, correctly identified the white Toyota Tundra in the McDonald's parking lot video as belonging to Troy Tran, he had mistakenly identified Tran on the interior McDonald's video as one of the men going to washroom. However, it was not until January of 2016 that W2, W3, Tran and Ly were arrested.

Crown Position

[405] I have set out the Crown argument above, but I will repeat their basic theory as to why Troy Tran is a member of the conspiracy.

[406] The Crown says the common enterprise of the UN gang was drug dealing. The conflict between the UN and the Bacons was a threat to that common criminal enterprise for all of them, both for business and for safety. Tran was a drug dealer. He would logically be affected by the Bacons; he had a vested interest in the outcome of any conflict between the UN and the Bacons. The murder of Duane Meyer not only threatened his livelihood but his own safety. Thus he had a strong motive to participate in the conspiracy and was probably a member. He was present and active within the UN at the times material to the conspiracy; therefore he shared their other common characteristic: membership in the conspiracy. Given all of the evidence, Tran could not be seen to be merely acquiescing or pretending.

[407] The Crown says their theory is supported by Tran's involvement in various events - for instance the Eagle Road incident and the Barber murder. Tran attended meetings, and he participated in group activities with the knowledge and consent of the others. Therefore they have established that Tran entered into an agreement with other conspirators and genuinely intended to be part of the conspiracy.

Defence Position

[408] It is the defence contention that there were members of the gang who were not in the Bacon war - e.g. Khamla Wong and perhaps JSP (although JSP is admitted to be a member of the conspiracy according to W3, who said he was not really interested in it, just in drug trafficking,).

[409] The defence says Troy Tran was one of these. He was a drug trafficker, a mellow pot-smoking guy. He was from Calgary. His appearances with gang members only show his association with the gang, or perhaps his membership in it, but he was not a member of the conspiracy to kill the Bacons and their associates. His appearance at the Barber shooting was, while not that of an innocent passerby, not indicative of a genuine intention to belong to the conspiracy to kill the Bacons and their associates. He went to meet his friends at the direction of Roueche, perhaps in order to open the office for them, but the events that transpired were unexpected by everyone. His presence indicates nothing more than passive acquiescence. The Crown has not proven that Tran was a member of a

conspiracy to murder the Bacon brothers and their associates.

Was Troy Tran a Member of the UN Gang?

- [410] The Crown says there can be no doubt that Tran was a member of the UN gang. Although the defence examined the evidence of the Vetrovec witnesses carefully on this point, I agree with the Crown that they have shown Tran to be a member or at the very least a close and respected associate of the UN gang, who was involved in the drug business.
- [411] The evidence of the Vetrovec witnesses as to whether Tran had an initiation ceremony, a ring, or attended specific dinners was too changeable and frail to rely upon. However, the evidence from the photographs, intercepts, Blackberries and from the surveillance supports their general evidence that Tran was often present in Vancouver, that he was close to the UN gang's leader, Clay Roueche, and that he attended various dinners and social events. Tran's closeness with Versace and W3 is also confirmed by photographs. The photographs also establish that he was often seen with his friend from Calgary, Bill Ly.
- [412] Tran's close relationship to Roueche is also confirmed by the admitted intercepts of conversations between Roueche and Kenshin Lee.
- [413] As I have said, with reference to the conversations between Roueche and Lee, I am satisfied that the references to "the mole" are to Tran. Mr. Tran's mole, with hair growing out of it, was a distinguishing and obvious characteristic remarked upon by all of the Vetrovec witnesses, and is clearly visible in several photographs.
- [414] I accept that the only reasonable inference from all of this evidence is that Tran was a member or close associate of the UN gang and was involved in the drug trade.

Was Troy Tran Aware of the Bacon Conflict?

- [415] The Crown also says that Tran would have had knowledge of the UN's conspiracy to kill the Bacons and their associates. Again, no serious argument was advanced against this proposition and I agree with the Crown.
- [416] The evidence of the fixation to the point of obsession of many of the UN gang members, at least after the death of Duane Meyer, to secure the deaths of the Bacons and their associates is clear. Tran was a close friend of Roueche's (although Roueche was arrested less than ten days after Duane Meyer's murder) and attended many dinners with the gang where the subject was discussed. Tran's attendance at the McDonald's the night of the Barber murder also supports the inference that he was aware of the Bacon conflict.
- [417] In the consideration of whether Troy Tran was probably a member of the conspiracy to kill the Bacons and their associates, I therefore start from those propositions: he was a member of the UN gang, or at the least, a close associate of it; and he was aware that a conspiracy came to exist, at least after the Meyer murder, in respect of killing the Bacons and their associates.

Evidence Directly Admissible Against Tran

[418] The main evidence from the Vetrovec witnesses that is directly admissible against Tran and that goes to the issue of whether he was a member of the conspiracy to kill the Bacons and their associates is:

- (1) W1's evidence that Tran participated in scouting expeditions organized by Clay Roueche for locations associated with the Bacons in 2006 and 2007;
- (2) W2's evidence that Tran was present at UN gang shows of force
- (3) W1's evidence that Tran helped scout out and went along on the Eagle Road trip to shoot at Dennis Karbovanec's house prior to the Barber murder
- (4) W3's evidence that Tran went along on a scouting trip to Mike Le's location prior to the Barber murder
- (5) Evidence that Tran regularly attended meetings of the UN gang where the Bacon conflict was discussed and plans were made;
- (6) W2 and 3's evidence that Tran was present at the Barber shooting
- (a) W3's evidence that he was taking the AK47s, which he said were being donated to the Bacon cause, to the office in Burnaby where Clay Roueche told him Troy Tran would meet them to open the office
- (b) W2's evidence that Tran identified the Bacons as the drivers of the Porsche Cayenne and suggested shooting them
- (c) W3's evidence that Tran, apparently receiving information from Clay Roueche, said Tilli-Choli would be arriving behind the McDonald's.
- (d) evidence that Tran followed Adkins' Tahoe after the shooting.

[419] Before considering that evidence, I will examine the development of the conspiracy.

When and Why Did the Conspiracy Start?

[420] The indictment covers the period of January 1, 2008 to February 8, 2009. However, it is primarily Troy Tran's presence at the Barber event on May 9, 2008 that brings him into focus, for a short time, after which he becomes a background figure once more, so it is important to consider what the conspiracy was like up to that date, and whether Troy Tran had any role in it.

[421] Admissions have been made as to who was a member of the conspiracy "at times" during the indictment period, and the evidence at trial does not support all the conspirators being members of the conspiracy for the entire indictment period.

- [422] For instance, W3 testified more than once that JSP, who was a member, according to the admissions, was not in favour of violence and was not really a part of the conspiracy. W2 and W3 are admitted to be members of the conspiracy at times during the period of the indictment, which is January 1, 2008 to February 8, 2009, but each testified that before the Duane Meyer murder (May 8, 2008), they did not consider the Bacon hunt to be something they should concern themselves with.
- [423] According to all three Vetrovec witnesses, everyone began to take the Bacons seriously after the Surrey Six murders in October of 2007, but it was Duane Meyer's death in May of 2008 that brought in the Vancouver group and motivated W2 and W3 to join with Roueche in a hunt to kill the Bacons and their associates. Up to that event, W2 and W3 each testified that they did not care much about the Valley war, but they became enraged at the Bacons over the murder of Duane Meyer. Meyer was a particular friend of W2 and neither W2 nor W3 could believe the Bacons had reached out to harm a member of their inner group.
- [424] W1 testified that the Valley gang, led by Roueche, with Conor D'Monte as a central figure, considered the Bacons real problems earlier on. The tit-for-tat shootings in 2006 and 2007 took place in the Valley. W1 said Conor D'Monte wanted revenge for his brother's shooting. However, W1 testified that he did everything he could not to participate in Bacon hunts at that time, as he considered the scouting and hunting expeditions a waste of time away from the business of making money from drugs. He said this view was shared by others.
- [425] However, even W1 said the Duane Meyer murder changed the behaviour of the gang. He testified that the livelihood of the group depended on showing its strength.
- [426] The conspiracy was obviously in place, at least for some members of the UN gang, by the time Cory Vallee was brought in as a supposed hitter. This was, according to W1, in early 2008. This is supported by the intercepted conversations in the Montreal hotel room in mid-April 2008 between Clay Roueche and Jon Kroitoru in which they discussed why Vallee was not doing the job he was supposed to do so he could get his money and leave.

Involvement of Tran Prior to the Barber Murder

- [427] W2 said he saw Troy Tran at a "show of force" organized by Clay Roueche. The timing was uncertain. Shows of force were group outings orchestrated by Roueche to show how strong the UN gang was.
- [428] W2 testified that he could not keep Tran and Ly straight in his mind. Although W2 thought he had run into Tran the night of Duane Meyer's murder when W2 had gone out scouting Bacon locations with Conor D'Monte, it turned out it had to have been Ly who was shot in the friendly fire incident, not Tran. W2's evidence in respect of Tran's presence at events before the Barber murder is not reliable.

- [429] Nevertheless, even if W2 is correct and Tran went along on a show of force which is not unlikely given how close he was to Roueche, that was a gang activity and not necessarily a conspiracy activity.
- [430] W3 testified that he believed Tran was along on a couple of scouting missions prior to Duane Meyer's death, but he was not 100% sure. The significance of these scouting missions, testified to ten years after they occurred, and assuming it was Tran who was there, shows enmity between the UN gang and the Bacons, but intelligence gathering was part of the drug gang culture not necessarily a conspiracy to kill the Bacons and their associates. As mentioned, W3 said he himself was not overly concerned with the Bacon war until after Duane Meyer's death. Generally, W3's evidence regarding Tran's presence at any specific event is uncertain, is not corroborated and is not reliable.
- [431] W1 knew Tran much better and for a longer period than did W2 or W3, and testified as to Tran's closeness to Roueche and to the Valley side of things. He said he was Roueche's bodyguard for a period of time and that he showed Tran and Mark Kim various Bacon locations.
- [432] There is no independent support for W1's evidence regarding Tran's activities as Clay Roueche's bodyguard or of involvement in the Bacon conflict when it was primarily a Valley concern. None of the intercepted calls referred to above assist the Crown with confirmation of W1's evidence that Tran went on regular hunting/scouting trips in relation to the Bacons in 2006, which is, in any event, two years before the indictment dates. The other Vetrovec witnesses, W2 and W3, were hardly aware of Tran at that time, and were not aware of any connection between him and W1.
- [433] In any event, W1's evidence that Tran acted as Clay Roueche's bodyguard for a period of time some years before the commencement of the indictment (January 1, 2008) does not put Tran into a conspiracy to kill the Bacons. Roueche had been shot at and was concerned for his safety. W1 testified that once Roueche moved to a new residence he no longer required a bodyguard.
- [434] W1 testified that he saw Tran at some of the hunts that began at the Mission hospital, although his evidence is vague. According to W1, these hunts were organized by Clay Roueche; W1 considered them a waste of time and tried to avoid them, and the purpose was not to shoot the Bacons but to gather intelligence so they could plan later eliminations. W1 said he was sure Tran was there, but these events blur in his mind and he could not say that Tran was along on any specific occasion. His memory of these events is not reliable and there is no corroborative evidence for his testimony.
- [435] W1 said Tran went along with him to scout out the Karbovanec residence on Eagle Road in early 2008, and was there when Duane Meyer intended to spray the house with bullets, although the plan fell through. However, W1's evidence was not always consistent on this plan, as he gave different versions in statements and at the Vallee trial. He also testified that he had heard from another gang member of at least one other similar event involving

Duane Meyer and also directed at this house. These events of planned vandalism occurred ten years before he testified. It is frail evidence and, although an event of some kind at Karbovanec's house was reported to police, there is no corroboration for the involvement of Troy Tran. I do not find it reliable in that respect.

- [436] According to W1, although everyone was concerned about the Bacons, a lot of people, including himself, tried to avoid having to do anything about it until Duane Meyer was killed on May 8, 2008.
- [437] W1 said even hard core gang members, including himself, did not follow the rules and considered a lot of the efforts Roueche expected them to make to be a waste of time. W1 himself thought it took energy away from making money, and he made every excuse he could to avoid the hunting expeditions. W3 and W2 also testified that the UN was not well organized or disciplined and many people did not follow the rules.
- [438] W1 had little else to say about Tran's involvement in the conspiracy, other than that everyone was expected to participate, especially after Duane Meyer was killed .
- [439] Taking all of their evidence into consideration, it is arguable that any of the Vetrovec witnesses, let alone Tran, could be said to be part of the conspiracy to kill the Bacons prior to May 8, 2008, that is, it is not clear that they formed a genuine intention to kill the Bacons prior to the Meyer murder.

Barber Murder

- [440] Tran emerges as a specific presence in the evidence at the Barber murder on May 9, 2008, that is, the day following the Meyer murder, which is the event that W3 and W2 say prompted them to become committed to killing the Bacons. Thereafter, Tran becomes a peripheral figure again, present at dinners, although the evidence is not always clear on which ones, and showing up in some photographs.
- [441] It is evident from the testimony of W2 and W3 and from the admitted evidence of the "friendly fire" incident at Hall Avenue and Collier Street in Burnaby in the early hours of May 9, 2008, and the Kensington offramp shooting (between 5 and 6 p.m. on May 9, 2008), that several members of the UN gang were actively hunting the Bacons the day and night following Duane Meyer's death and were hoping to kill them.
- [442] Despite the active hunting by others earlier in the day, the McDonald's meeting with Tran was somewhat different. W2 and W3 testified that they were dropping guns off; they were not intending to shoot anyone that night or at all. W3 said Clay Roueche told them to meet Tran so he could open the "office" for them to allow them to drop off the guns at the UN office in the highrise complex. There is no evidence as to whether Tran knew why he was to meet them, and W3's evidence as to the content and timing of this message changed during his testimony. He acknowledged he was not sure that Roueche actually mentioned Tran by name.

- [443] The Crown relies on W2's evidence that Tran pointed out the Bacons at McDonald's and suggested shooting them. W1 testified that he had sent some pictures of the Bacons around at Clay Roueche's direction, and the Crown suggests this may have enabled Tran to recognize them as Bacons. The photograph of Jonathan Bacon entered as an exhibit through W1 is a candid shot and blurry. The photograph of Jamie Bacon is from the side and is also blurry.
- [444] I do not accept W2's evidence that Tran identified the people standing by the Porsche as Bacons. W2 got the arrival sequence of events wrong, according to the video; W2 said the Porsche arrived before they went into the washroom and then returned to the parking lot. W2 testified that he realized there were three male "heatbags" in that vehicle. That is not correct. The three men from the Tahoe, that is W2, W3, and Adkins, went to the washroom. The Tundra arrived; two men from the Tahoe stood by the driver's window of the Tundra; then the Porsche pulled in. There were two males and a female around that vehicle. W2 said he alone spoke to Tran at the window of the Tundra, but the video shows two men speaking to him.
- [445] As well, despite W2's evidence that the Porsche arrived first, in fact, the video shows that Tran arrived before the Porsche thus he could not have been sent to McDonald's in response to an email for aid with the Bacons.
- [446] Contrary to W2's evidence, W3 said he was the person who recognized the licence plates as Bacon plates; he said no one knew what the Bacons looked like. He did not recognize the people and he said he thought he asked Tran if he did. He said Tran told him he did not.
- [447] I note that the report that W3 said he sent to Clay Roueche was that they had gotten Jamie Bacon, when in fact it was Jonathan Bacon who was present.
- [448] Considering the obvious errors in W2's evidence, the contrary evidence from W3, together with how dark it was at the scene, the quality of the photographs sent out by W1, that W2 said he saw three men, when there were actually only two and one woman, that the men W2 said he saw were wearing hoodies, which would make their faces even more difficult to see, and that W1's evidence about when and to whom he sent photographs of the Bacons is based on recollections from ten years ago, I cannot rely on W2's testimony regarding remarks made by Tran in the McDonald's parking lot.
- [449] In general, all of W2 and W3's evidence regarding that evening is fragile. It conflicts with the video evidence in important respects, and when it does, they each preferred their memories. Their respective testimony is at odds with each other, regarding when Tran left the group after they ditched the gun. As well, W2 maintained W1 came and picked up Tilli-Choli from Niko's place when W1 was actually entering Canada through YVR at the time.
- [450] What can be gleaned from the video is that Tran arrived before the Porsche, spoke to two of the men from the Tahoe, followed the Tahoe out of the parking lot, and some minutes later, followed some distance behind the Tahoe as the Tahoe followed the Porsche. The

admissions lend support to W2's evidence that Tran was stunned by the shooting, unable to move once they pulled up behind the Cherokee, then backed up into another car, and finally managed to head further east on Kingsway, passing the Porsche where it had crashed.

- [451] W2 and W3's testimony conflicts in regard to Tran's movements once the Tahoe and Tundra met up on Marine Drive. W2 said Tran was quiet and nervous throughout and left as soon as they got to the cul-de-sac; W3 said Tran drove them all downtown. There is no way to tell which of these versions is correct; each witness is sure his recollection from ten years ago is correct and neither is corroborated.

After the Barber Murder

- [452] Other than W2's evidence that Tran confirmed that a Bacon had not been shot the night before, there is no evidence respecting Tran for some time after the Barber murder. I find W2's evidence that he confirmed the mistaken shooting with Tran unlikely, as he said he did not have Tran on his Blackberry, these events were ten years ago, and he is clearly mistaken about so many other things that night.
- [453] The indictment period continues through 2008 until two days following the murder of Kevin Leclair. The Crown led evidence of a few events during this time, which I have set out above when discussing the evidence of W3. There is no suggestion that Tran was involved in any of them or that he was connected in any way to the murder of Kevin Leclair.
- [454] According to the Vetrovec witnesses, Tran's main connection to the UN gang was Clay Roueche. He was also friends with Versace. Clay Roueche was arrested on May 17, 2008, a few days after the Barber murder. From some of the intercepts following his arrest, Roueche's friendship with Tran is evident, but there is no evidence in those conversations of a Bacon connection that would assist the Crown in establishing Tran's membership in the conspiracy. Versace seemed to assume a lesser role once Conor D'Monte took over.
- [455] W2 and W3 testified that Tran was at the meeting when Conor D'Monte was elected and the various groups were set up. W2 said the purpose of this meeting was to set the chain of command, although the Bacons were always discussed. There is no evidence of participation by Tran at this dinner, although apparently he and Bill Ly were confirmed as the FK Calgary group.
- [456] Tilli-Choli and Eghtesahd had one conversation in October 2008 which was intercepted in which it could be argued that "Troy" is Tran, and that he told them someone belonged to their group. Within minutes, it seems that this information is discarded as incorrect, which, if anything, casts doubt on Tran as a reliable source of information for the group.

- [457] The testimony of Tran's attendance at any particular meetings after Conor D'Monte took over as leader is fraught with inconsistencies and uncertainties. The "legs out" meeting at the Manzo Restaurant was a significant one but the evidence as to whether Tran was there is equivocal. Even if the Vetovec witnesses tried to place Tran at a particular meeting, there is no evidence he said anything or took part in any planning then or at any other meeting.
- [458] It appears that Tran maintained his connection with the gang after Roueche's arrest; there are pictures of him with Versace and with W3. However there is no evidence of his attendance at any of the Bacon related events. He does not show up on surveillance at the restaurants. W3 said Tran was not part of any hit crew and never shared or passed on any information about the Bacons, and W2 testified that he was not aware of Tran making any specific moves in the conspiracy.

Conclusion

- [459] There is no particular piece of evidence, other than W2's account of Tran's identification of the Bacons in the McDonald's parking lot, which I do not accept, that marks a genuine intention on the part of Tran to agree to murder the Bacons.
- [460] However, the Crown says it is a conglomeration of all of the circumstantial evidence, including that all gang members felt threatened by the Bacons to such an extent that they all agreed to kill them, that leads to only one reasonable conclusion: Troy Tran was probably a member of the conspiracy. Then all of the evidence of the other conspirators which was in furtherance of the conspiracy can be used to establish Tran's guilt beyond a reasonable doubt.
- [461] As already mentioned, other than the Crown's general theory that any and every member of the UN gang must have been motivated to want the Bacons dead, there is no additional evidence under the co-conspirator's exception to the hearsay rule that would assist in proving Tran's state of mind, that is, his genuine intention to agree to murder the Bacons and their associates.
- [462] I have said the Vetovec's evidence of specific attendances of Tran at dinners and events is very frail, given the passage of time and their own uncertainties and inconsistencies. In any event, I accept that Tran's attendance at UN gang dinners was frequent, but, according to the Vetovec witnesses, he did not provide any intelligence on the Bacons and had no specific role in the conflict. There is no evidence to support him being involved in planning or even acquiescing to discussions involving the murder of the Bacons and their associates.
- [463] The Crown suggests that the Bacon threat to the UN drug trade was enough motivation for everyone associated with the gang to want the Bacons dead. However, there is no evidence from which it could be inferred Tran feared for his life as a result of the Duane Meyer murder.

- [464] There is evidence, which I accept, that Tran was a drug trafficker, that he was connected both to Calgary and to Vancouver, that he was the leader of the FK gang that was in a war with the FOB gang in Calgary, that he was a good friend of UN leader Clay Roueche, and that he attended gang events regularly.
- [465] However, there is little if any evidence about Troy Tran's business dealings in B.C., except W1's testimony that Tran was involved in Clay Roueche's cross-border drug business. There is no evidence that the Bacons threatened that business.
- [466] There are some members in the list of conspirators in the admissions, such as Dilun Heng, Yong Sung Lee, and Aram Ali about whom I heard little evidence. Craig Cameron was only mentioned in passing if at all. However, there is distinct evidence of motive as well as evidence of a genuine intention to agree to kill the Bacons among nearly all of the rest of the admitted members of the conspiracy who feature in the events about which I heard evidence.
- [467] Clay Roueche hired Cory Vallee to kill the Bacons, a man recommended as a hit man by Jon Kroitoru. Cory Vallee and Jesse Adkins shot Kevin Leclair and were paid for it by W2 at the request of Conor D'Monte. Conor D'Monte wanted revenge when his brother was shot, and orchestrated an aggressive war against the Bacons. Both W2 and W3 testified they were motivated by rage and hatred against the Bacons once Duane Meyer was killed. Barzan Tilli-Choli shot Jonathan Barber. Amir Eghtesahd and Karwan Saed were part of Tilli-Choli's group, and show up frequently on the intercepted calls discussing the Bacons. Although not in the car when Tilli-Choli shot Barber, Saed had driven him to Arcola Street in response to Clay Roueche's information that the Bacons were in the parking lot. Kreshnik Ismailaj participated in the Kevin Leclair murder.
- [468] W1's intentions regarding the Bacons are not as clear but he testified that the Meyer murder meant everyone had to take hunting the Bacons seriously. He gave the most evidence about the threat posed by the Bacons to the UN drug lines in the Valley, and said Clay Roueche told him to look after Cory Vallee, the hit man, and show him around. However, he testified that he did not like to waste time on scouting and reconnaissance missions, although he did what he was told to if he could not avoid it. His state of mind throughout was concentrated on making money, not on killing the Bacons.
- [469] The Crown must establish the *actus reus* and the *mens rea*: that is, that Tran formed an agreement with another conspirator to murder the Bacon brothers and their associates, with the genuine intention that its object be realized. While the offence of conspiracy is "considered to be complete before any acts are taken that go beyond mere preparation", that is, there need not be evidence of specific acts in order to prove an agreement to enter into a conspiracy and a genuine intention for its object to be realized, there must be "a meeting of the minds with regard to a common design to do something unlawful" (see *R. v. Déry*, 2006 SCC 53, at para. 44).

- [470] As I have outlined above, there is specific evidence regarding nearly all of the conspirators regarding their motives and involvement in an agreement to kill the Bacons and their associates as I have outlined above. It is significant, in my view, that there is no similar evidence in respect of Tran's motivations.
- [471] The event that ties Tran into one of murders aimed at the Bacons, that is the murder of Jonathan Barber, happened the day after Duane Meyer's murder.
- [472] It took the Meyer murder for hard core UN gang members like the three Vetrovec witnesses to form a genuine intention to kill the Bacons; however, there is no evidence that Troy Tran immediately became similarly minded, especially since less than ten days later, Tran's main connection to the gang, Clay Roueche, was arrested on unrelated matters in the United States and never returned to Canada.
- [473] There is evidence from the Vetrovec witnesses that Tran knew Duane Meyer, although no specifics were provided, and that he and Bill Ly were concerned about his murder and attended his funeral. However, W1 testified that both Tran and Ly seemed a little removed from the reaction of the local gang members. This is consistent with the rest of the evidence about Tran and Ly: they were drug traffickers originally from Calgary, they attended dinners when in town but were away for long periods of time, and, at least in the case of W2, at the time of the Barber murder and the friendly fire incident, they could not be told apart, suggesting they were not integral to the group, at least on the Vancouver side, in early 2008.
- [474] There is also evidence from W3 that Tran told W3 that the Calgary group would not be helping the Vancouver UN gang in the Bacon war because the Vancouver UN gang was not helping them with their own war in Calgary.
- [475] The Barber murder took place the day after Duane Meyer's murder. The vague evidence from W3 is that he believes Roueche told him Tran was to meet them in Burnaby to let them into the office to store the guns, although there is no evidence of what Tran himself was told. How or why he came to the McDonald's parking lot is not clear.
- [476] Neither W2 nor W3 were on a scouting mission that night. They did not intend to shoot anyone. They were not hitters themselves, and even once Tilli-Choli arrived, they advised him there were security cameras at McDonald's in order to dissuade him from shooting in that area.
- [477] The evidence from W3 is that they were told to meet Troy Tran near the office. Why Tran came to the McDonald's is not explained, but it was not in response to a Bacon presence as he arrived before the Porsche. From then on, the events took an unexpected turn, ending in Barber being shot by the volatile and unpredictable Tilli-Choli. W2 testified that when they met up on Marine Drive, everyone was happy at this result, but that Tran was quiet and nervous the whole time, and left the group as soon as he could. While this differs from W3's evidence that Tran drove them downtown, W2's evidence of Tran's demeanour,

nervousness and agitated driving is confirmed by the other witnesses to the immediate aftermath of the shooting who saw the white pickup reverse into the car behind.

- [478] The Crown made extensive argument designed to show that "passive acquiescence" is not applicable in the circumstances of this case and has been mistakenly used to consider mens rea instead of actus reus. In my view, knocking down the "passive acquiescence" argument does not further the Crown's position because they acknowledge that, if the accused has knowledge of the unlawful object to be obtained, in order for him to be a member of the conspiracy (that is, in order to prove mens rea beyond a reasonable doubt), the court must be able to conclude that the accused, with the genuine intention of agreeing with others to murder the Bacons and their associates, did or omitted to do something for the purpose of furthering the unlawful object and did it with the knowledge and consent of another conspirator. Thus the court is still left with the fundamental question: has the Crown proven a genuine intention on the part of Troy Tran to agree with others to murder the Bacons and their associates.
- [479] I am unable to conclude that Troy Tran formed a genuine intention to agree to kill the Bacons, either prior to the Meyer murder, which is at a time when many of the other admitted co-conspirators, including the Vetrovec witnesses, had no such genuine intention either, nor after the Barber murder, when there is little evidence of his activities except as a gang member. The only event he participated in was the meeting at McDonald's, the day after the Meyer murder. The Barber murder, committed by Tilli-Choli, was sudden, unplanned, unexpected, and opportunistic. There is no aspect of that event from which I can be satisfied beyond a reasonable doubt that Tran had a genuine intention to agree to murder the Bacons and their associates.
- [480] Taking all of the evidence into consideration, I am unable to conclude that the Crown has established beyond a reasonable doubt that Tran was a member of a conspiracy to murder the Bacons during the period of January 1, 2008 to February 8, 2009, and I find him not guilty.

"Humphries J."

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